IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003216

First-tier Tribunal No:
PA/59126/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of December 2024

Before

UPPER TRIBUNAL JUDGE MEAH

DEPUTY UPPER TRIBUNAL JUDGE JACQUES

Between

D K
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk, counsel, instructed by Broudie Jackson Canter
For the Respondent: Dr Ibisi, Senior Home Office Presenting Officer

Heard at Field House on 29 November 2024

DECISION AND REASONS

Introduction

1. The appellant appeals with the permission of Upper Tribunal Judge Rastogi against the decision of First-tier Tribunal Judge Gould ("the judge"). By their decision, promulgated on 22 May 2024, the judge dismissed the appellant's appeal against the respondent's refusal of his application for asylum and humanitarian protection.

2. The appellant was represented at this hearing by Mr. Schwenk of counsel and the respondent was represented by Senior Presenting Officer, Dr Ibisi. We are grateful to both advocates for their assistance in this matter and for their presentation of this case.

Background

3. The appellant is a national of Iran of Kurdish ethnicity. The appellant entered the UK illegally by boat on 8 August 2020 from France and claimed asylum on the basis that he would face persecution were he to be returned to Iran as a result of his asserted work for the Kurdish Democratic Party of Iran (KDPI).

4. On 2 October 2023 the respondent rejected the appellant's claims by way of refusal letter. In summary, the respondent did not accept the appellant's account was credible about his experiences in Iran nor did the respondent accept that the appellant had shown that he was engaged in work for the KDPI.

The Appeal to the First-tier Tribunal

5. The appellant appealed to the First-tier Tribunal and his appeal was heard by the judge in Manchester on 20 May 2024. Mr Mason represented the appellant at that hearing. The respondent was represented by Ms Chowdhury a Home Office Presenting Officer.

6. It was agreed between the parties that the central issue to be dealt with by the judge was whether the appellant was credible about the reasons he claims to have fled Iran. It was agreed between the parties that if the appellant was credible then his appeal must succeed and if he was not credible then his appeal must fail. The appeal therefore turned on the appellant's credibility.

7. The judge then went on to hear the evidence and submissions in the case and promulgate his decision. The appellant's case was that he had been working as a Kolber when he had been recruited by his friend to distribute leaflets for the KDPI. The appellant gave evidence that he had had to leave Iran following the arrest of his friend and the subsequent discovery of KDPI materials that the appellant had left at his uncle's house. The appellant gave evidence that he would be at significant risk were he to be returned to Iran.

8. The judge dismissed the appellant's appeal on both asylum and humanitarian grounds. The judge's findings are set out at paragraphs 24 to 32 of their decision, albeit an erroneous paragraph 34 is to be found between paragraphs 25 and 26.

9. The judge found at paragraph 32 of his decision that the appellant's evidence was:

   "Incredible, lacking in detail and implausible."

The Appeal to the Upper Tribunal

10. The appellant made an application for permission to appeal on 5 June 2024. There were three grounds of appeal relied upon by the appellant, namely 1) a failure to give adequate reasons, 2) a failure to take into account evidence on material issues and 3) the making of irrational findings by the judge.

11. The application for permission to appeal was refused by First-tier Tribunal Judge Saffer on 27 June 2024.

12. The appellant sought to renew his application to appeal to the Upper Tribunal by way of notice filed on 11 July 2024.

13. On 18 September 2024, Upper-Tribunal Judge Rastogi granted permission to appeal. The grant of permission noted that whilst credibility and weight are matters for the judge, the "grounds raise arguable concerns about the way in which the judge dealt with parts of the credibility assessment."

The Appeal Hearing and Submissions in the Upper Tribunal

14. We heard the appeal hearing in this matter on 29 November 2024. Prior to the substantive hearing commencing, we asked the parties whether either sought to raise any issue with the judge failing to reference **HB (Kurds) Iran CG [2018] UKUT 00430**. Neither Mr Schwenk nor Dr Ibisi took issue with this, and the appeal was confined to the issue of the judges' findings.

15. On behalf of the appellant, Mr Schwenk framed his argument in accordance with the grounds of appeal and took us through, what he submitted were the making of irrational findings by the judge that were not supported by the evidence in the case. Mr Schwenk noted in particular the conflicts between paragraph 25 where the judge had found the fact that the appellant had not used social media to advance the KDPI cause when in the UK undermined his claim and paragraph 34 where the judge had accepted that the appellant was illiterate. Mr Schwenk also drew our attention to the adverse credibility finding in paragraph 34, in that it was submitted that the finding was in direct conflict with the appellant's response at question 91 of his AIR where the appellant had explained that the leaflets that he had distributed had "writing on them against the Iranian government" and that the appellant was "distributing the flags of Kurdistan to the houses in the area."

16. Mr Schwenk further argued that the judge had fallen into error at paragraph 30 of their decision when finding that the appellant had been inconsistent with his chronology of events and seeking to blame the interpreter, when the evidence, as set out in the appellant's reply to question 107 of his AIR confirmed that the appellant had stated he himself had made a mistake. Mr Schwenk submitted the judge placed undue weight on the appellant being satisfied with the interpretation in circumstances where the appellant spoke no English and therefore could not vouch for the accuracy of the interpretation.

17. Finally, Mr Schwenk submitted that the judge had relied on irrelevant evidence when making adverse credibility findings at paragraph 27 of his judgement. Mr Schwenk drew our attention to the fact that the judge was referencing the appellant's reply to question 117 of his AIR and that this question had dealt with a different event to that addressed at paragraph 27. In those circumstances, Mr Schwenk submitted that there were significant problems with the judges adverse credibility findings and that they were to such an extent that the judge had made a material error of law.

18. On behalf of the respondent, Dr Ibisi submitted that the judge was entitled to make the findings that they did and that the appellant's appeal was nothing more than a disagreement with those findings. Dr Ibisi argued that we should be careful with interfering with findings made by the judge, given that the FtT judge was best place to determine the case having heard the evidence. Dr Ibisi repeated the judge's findings in her submissions and argued that the judge could have come to no differing conclusion than he had done given the evidence in the case.

Analysis

19. We are in no doubt that the judge erred as argued by Mr Schwenk. We accept that the court at first instance is often best placed to make findings following the hearing of evidence, however in this case it is clear that the judge fell into error by making adverse findings as to credibility that were not supported by the evidence in the case and at points were in direct contradiction with it.

20. At paragraph 24 of the decision the judge makes an adverse credibility finding against the appellant due to his lack of engagement in any political activities in the UK, yet in the same paragraph accepts that the appellant lacks the means to attend such events and that the appellant lives a considerable way away from London (where most of the political activities were taking place). The judge goes on to criticise and draw adverse inference against the appellant for failing to show his support by other means, such as using social media, however the judge's finding is in direct contraction to their finding at paragraph 34 that the appellant is illiterate and therefore could not engage in the same.

21. The judge at paragraph 34 finds that the appellant could not give any adequate details about the contents of the KDPI material that he was

distributing, however the appellant did give such details, both in his witness statement before the First-tier Tribunal and more importantly at the appellant's response at question 91 of his AIR where the appellant had explained the contents of the leaflets that he was delivering as well as describing other materials that were being carried and distributed by him.

22. At paragraph 26 the judge makes adverse credibility findings against the appellant for failing to suffer more serious consequences than he claimed as a result of his support for the KDPI, however, the appellant clearly stated in his response to questions 98, 99 and 10 of his AIR that he had been shot at on two occasions and had suffered injuries to his fingers and arm. The appellant's evidence, unchallenged, was that he no longer had the power in his left arm and hand to carry things. The judge at paragraph 27 finds that the appellant should have been able to give more details about these incidents and places weight on their finding that in the AIR, the appellant had asked the interpreter to remind him of an earlier answer. However, whilst the judge was referencing the appellant's reply to question 117 of his AIR, the appellant's reply actually dealt with a different event, the alleged torture of his friend and was therefore not relevant to this aspect of credibility.

23. The judge appears to have misunderstood and drawn significant adverse inferences from the appellant's evidence relating to how long he stayed at his uncles' house, as set out in their decision at paragraph 28, however, the appellant's witness statement, at paragraphs 40 to 42 sets out his case on this particular issue, stating that he was only able to stay there for one night before he had to flee across the Iranian border.

24. The judge also fell into error when, at paragraph 30, the judge placed reliance on the appellant stating that he was happy with the interpreter's interpretation, when the judge had already accepted that the appellant was illiterate and unable to speak English. It is hard to accept that the appellant could have thus understood whether or not the translator had accurately translated his answers into English.

25. We are persuaded that these errors were material (per the test at paragraph 43 of **ASO (Iraq) v SSHD [2023] EWCA Civ 1282** and in those circumstances, we set aside the decision of the judge and remit the appeal to the First-tier Tribunal for reconsideration of the appellant's appeal. We have considered whether to re-make the decision or remit the case to the First-tier Tribunal. As the error of law relates to the assessment of the appellant's credibility, which must be carried out afresh, it is appropriate to remit the appeal to the First-tier Tribunal.

Anonymity

26. An Anonymity Order with respect of the appellant has previously been granted by the First-tier Tribunal and we maintain that order.

Notice of Decision

27. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside in its entirety with no findings preserved.

28. The appeal is remitted to the First-tier Tribunal sitting at Manchester to be considered afresh with no findings preserved by a judge other than First-tier Tribunal Judge Gould.

G. E. Jacques

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 December 2024