



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-003962
UI-2024-004976
First-tier Tribunal Nos: PA/54904/2023
LP/04768/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th December 2024

Before

UPPER TRIBUNAL JUDGE O'BRIEN

Between

NH
(ANONYMITY ORDER MADE)

and

The Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr E Nicholson (Counsel), JKR Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Field House on 30 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. This is an appeal against the decision of First-tier Tribunal Hawden-Beale (the judge) who, in a decision and reasons promulgated on 26 July 2024, dismissed the appellant's appeal against the respondent's refusal of his protection and

human rights claims. Permission to appeal was granted by First-tier Tribunal Judge Boyes on one ground only: ground 6, that, given acceptance of Facebook activity and attendance at demonstrations, the judge failed to have considered properly whether there was a risk to him on return to Iran.

2. An application was made by the appellant to renew on his other five grounds. It did not appear to have been received by the Tribunal and was the subject of some correspondence which was referred to me a few days ago before the hearing. I indicated that I was not prepared to adjourn today so that the renewed application for permission could be dealt with in advance but rather that we would deal with permission and the substantive appeal as a rolled up hearing.
3. As it was, the respondent conceded that there was an error of law on the ground for which is presently before me and furthermore that one of the other grounds was both arguable and disclosed an error: ground 2, that the judge applied too high a standard of proof. Mr Nicholson agreed that, if I concurred with the respondent's concessions, it would be necessary to set aside the decision with no findings preserved to be reheard in the First-tier Tribunal and consequently that it would be unnecessary for him to pursue his renewed application for permission to appeal on the remaining 4 grounds.
4. I do agree that the judge erred in law as pleaded in grounds 2 and 6. In [47], when considering the appellant's account of events near the border, the judge says amongst other things:

'If he was only discussing these matters with the man at the front, the others at the back would not necessarily have heard what was being said and thus would not necessarily know his details...
5. There was no finding as to whether there was a reasonable likelihood that the appellant had been overheard. Instead, the judge's approach suggests a higher standard of proof being required.
6. As for the judge's approach to the appellant's sur place activities, she says at [54]:

'He is a low level participate in the demonstrations outside the embassy... I am satisfied that if he were to be returned, it would not be unreasonable for him to delete his Facebook account per head note 6 of XX (*'the timely closure of an account neutralises the risk consequential on having had a "critical" Facebook account, provided that someone's Facebook account was not specifically monitored prior to closure'*) because I am not satisfied that his political profile here in the UK or even in Iran would mean that the authorities would be aware of it otherwise.
7. In concluding that it would be reasonable for the appellant to close his Facebook account, the judge's finding on the genuineness of the political beliefs posted there. On the contrary, the judge appears to accept that the appellant's political beliefs are genuine.
8. Consequently, the appeal is allowed. The decision involved the making of an error of law. Given the extent of the fact-finding necessary, the matter shall be remitted to the First-tier Tribunal with no findings preserved.

Notice of Decision

1. The appeal is allowed.
2. The judge's decision on the appeal involved the making of an error of law.
3. The matter shall be remitted to the First-tier Tribunal to be heard by a different judge with no findings of fact preserved.

Sean O'Brien

Upper Tribunal Judge O'Brien

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 December 2024