



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001441

First-tier Tribunal Nos: PA/50907/2023
LP/02797/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

14th January 2025

Before

UPPER TRIBUNAL JUDGE KEITH

Between

'AM' (Iran)
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms A Imamovic, Counsel, instructed by JKR Solicitors
For the Respondent: Ms S Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 13 December 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of his family is granted anonymity. This is because the subject matter of this appeal is a protection claim. No-one shall publish or reveal any information, including the name or address of the appellant or his family, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. These written reasons reflect the oral decision which I have given to the parties today. They are brief by nature of the Secretary of State's concession made at the beginning of the hearing, for which I am grateful, and I regard that

concession as properly made considering the transcript of the First-tier Tribunal's hearing.

2. The appellant appeals against the decision of a Judge of First-tier Tribunal, Judge Codd, heard on 10th January 2024 in which the Judge dismissed the appellant's protection appeal. The context is that the appellant is in an Iranian national who claims to have suffered adverse interest in Iran as a person of Kurdish ethnic origin because he had distributed leaflets for an opposition group, the KDPI.
3. He further claimed to have engaged in sur place activities, including attendance at demonstrations in the UK and posts on Facebook. The Judge had identified the issues and had then gone on to consider the appellant's credibility. The Judge rejected the appellant's credibility, including at §34 and §36 based on vagueness in his account, and on the basis of the language in which the leaflets were written and whether they were Kurdish or in Farsi. In addition, the Judge concluded that considering the lack of genuine political belief, the appellant could delete his profile following the guidance in XX (PJAK) – Sur place activities – Facebook) Iran CG [2022]. Although he had attended demonstrations in the UK, his activities were contrived to bolster a false claim of political belief.
4. The appellant appealed against that decision on four grounds. The first was that any suggestion that his evidence lacked clarity and was vague was not a fair characterisation of that evidence. That was subsequently supported by a transcript where, in detailed submissions, Ms Imamovic points to the specific questions which the appellant was asked and which he answered in cross-examination. It was therefore unclear how the Judge had reasoned that the appellant's evidence had been vague.
5. The appellant also criticised the basis of an adverse finding on credibility because despite the appellant having lost his phone in Iran, the Judge found that the authorities would be unable to unlock it without a pin number. That, the appellant says, was an unfair criticism where the allegation was never put to him and in circumstances where the refusal letter had not suggested that but had instead suggested that there would be no relevant material on the phone. The next ground was that the Judge had failed adequately to consider the appellant's explanation as to how he understood Kurdish content on Facebook. Finally, the Judge had not explained adequately how the appellant was not genuinely engaging in demonstrations in the UK.
6. Permission was granted by Deputy Upper Tribunal Judge Shepherd on all grounds.

The Secretary of State's Concession

7. Ms Simbi began the hearing by indicting that having reviewed the transcript of the FtT hearing, it was now clear that, in the context of a challenge to Judge's findings that the appellant's evidence had been vague, the respondent accepted that the appellant had been asked questions about the circumstances in which he had distributed leaflets in Iran and he had answered those questions. The correct and necessary approach was that for the Judge to have explained why they did not accept those responses as reliable or credible. The Judge did not. That was a material error, such that the Judge's decision was not safe and that the Judge's assessment of credibility could not be preserved. Ms Simbi also accepted that the

issue of whether the phone could or could not be unlocked had not also been put to the appellant.

8. Having accepted the concessions as having been properly made, I am satisfied that the analysis does indeed undermine the Judge's assessment of the credibility of his claimed adverse interest in Iran. That inevitably has an impact on the Judge's assessment of the appellant's sur place activities in the UK, whether he held a genuine political loyalty to opposition parties and the findings that his Facebook posts and attendance at demonstrations were contrived. In the circumstances, Ms Simbi accepted, and I regard it as properly accepted, that none of the Judge's findings can be preserved and accordingly the Judge's decision is set aside in its entirety and remaking will need to be de novo.

Notice of Decision

9. **The Judge materially erred in law such that his decision was not safe and must be set aside, without preserved findings.**

Disposal

10. I canvassed with the representatives whether I should retain remaking in the Upper Tribunal or alternatively remit the matter to the First-tier Tribunal. I bear in mind the presumption that remaking be retained in the Upper Tribunal, but I have also had regard to the two exceptions, namely paragraphs 7.2.(a) and (b) of the Senior President's Practice Statement. I bear in mind that the effect of the errors, namely a failure to allow the appellant to answer concerns about the mobile phone deprived him of a fair hearing, so that sub-paragraph (a) is met. I am also satisfied that by virtue of the none of the findings being preserved that the nature and the scope of fact-finding will be extensive, so that paragraph (b) is also met.
11. Both exceptions being met, it is appropriate that I remit the matter to the First-tier Tribunal to be considered in Birmingham by a Judge other than Judge Codd.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2nd January 2025