



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/07054/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 June 2019**

**Decision & Reasons Promulgated  
On 11 June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**MAG  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Slatter, of Counsel, instructed by Fadiga & Co Solicitors

For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

**DECISION ON ERROR OF LAW**

**Anonymity**

1. The First-tier Tribunal made an anonymity order. I have not been invited to rescind that order. The order remains appropriate as this is a protection claim.

**Background**

2. This is an appeal from a decision of First-tier Tribunal Judge O'Garro (hereafter "the Judge") promulgated on 26 March 2019, whereby she dismissed the Appellant's appeal against the decision of the Secretary of State to refuse to recognise him as a refugee, or as a person otherwise requiring international protection.
3. The Appellant is a national of Iran and of Kurdish ethnicity. He entered the United Kingdom on 14 December 2016 as a minor and claimed asylum. Following an interview, the Respondent did not dispute the Appellant's nationality, race or age and, in view of the latter, granted leave to remain until 29 October 2017. The Respondent however did not accept the material facts underpinning the asylum claim. It is not necessary to delve into the detail of the claim but essentially the Appellant feared the Iranian authorities following the discovery by police of anti-government political material amongst his father's belongings who smuggled goods between Iraq and Iran.
4. The Judge accepted the Appellant's father engaged in smuggling activity and that the Appellant assisted him as this was consistent with the background evidence that stated smuggling was integral to village life [33]. The Judge did not accept the remainder of the account finding implausibility's therein and its incongruence with the background evidence [34] to [39]. These findings were construed as being fatal to the Appellant's credibility leading the Judge to dismiss the protection claim.

### **The Application for Permission to Appeal**

5. The Appellant's representatives applied on his behalf for permission to appeal to the Upper Tribunal and permission was granted by the First-tier Tribunal on 22 April 2019.

### **Discussion**

6. Mr Kandola fairly concedes that the Judge's decision cannot stand. He properly accepts that the Judge's credibility assessment is flawed, and this vitiates the Decision. I agree. In view of the Respondent's concession that the decision cannot stand it is not necessary to traverse all the grounds raised by Mr Slatter or set out my reasons in detail, but I briefly do so below.
7. First, there is a mistake of fact at [34]. Therein the Judge noted the background evidence reporting monthly killings by Iranian border guards of Kurdish people smuggling goods across the border from Iraqi Kurdistan. In view of this, the Judge concluded "*that if the Appellant's father was found to be smuggling goods, which included political leaflets the likelihood is the border guards would have killed him right*

*there at the border and there would have been no need to raid his home.”*

8. The obvious difficulty with this conclusion is that it was not the Appellant’s claim that his father was caught at the border let alone with political leaflets which he claimed were in fact discovered at his home. There is no dispute that the Judge’s view of the Appellant’s claim in this regard is mistaken. The error is manifest and evidently impacted upon the Judge’s assessment of credibility.
9. Second, at [35] to [36] the Judge found that the covert presence of military activities in Kurdish areas together with the high risk of being arrested and detained would have deterred the Appellant’s father from engaging in adverse activities. The difficulty with that is that it suggests that no Kurd would engage in any adverse activity in Iran in fear of being arrested and detained or, in other words, indicates that the Judge believed that no-one advancing such a claim could be believed. Either premise is not consistent with the background evidence the Judge quoted at [30] which indicates that Kurds engage in anti-governmental activities despite being targeted by the authorities notwithstanding the risk of arrest and detention.
10. Third, and similarly, the Judge falls into error at [37] in finding that the background evidence suggests that a person connected to Kurdish political parties may simply be called in for questioning and that this undermined the Appellant’s claim. It is not entirely clear why the Judge took that view but, in any event, it is contrary to the findings of the Upper Tribunal in HB (Kurds) Iran CG [2018] UKUT 430.
11. Overall, I agree with Mr Slatter that the background evidence supported the Appellant’s account rather than undermined it and that the Judge’s conclusions to the contrary lacked clarity and logic.

## **Decision**

12. In all the circumstances, the Judge materially erred in law. I set aside the decision of the First-tier Tribunal. The appeal is required to be reheard de novo.

## **Disposal**

13. As for the venue for the rehearing, while Mr Slatter invited me to remit the appeal to the First-tier Tribunal, I expressed some reservations in doing so. This appeal has been previously heard by the First-tier Tribunal on two occasions and the parties are entitled to finality of litigation. However, Mr Kandola was also of the view that the matter should be remitted because not do so would deprive the Appellant of his

right of appeal to this Tribunal. Having considered the submissions of the representatives and paragraph 7.2(b) of the Practice Statement of 13 November 2014, I have decided reluctantly to remit the appeal to the First-tier Tribunal. Given the history of the appeal, I am of the view that the rehearing should be before an experienced Salaried Judge of the First-tier Tribunal.

### **Notice of Decision**

The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly, the appeal is remitted to the First Tier Tribunal for rehearing de novo by a Salaried Judge (not Judge O'Garro or Judge Davidson).

### **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 his 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

Dated: 5 June 2019

Deputy Upper Tribunal Judge Bagral