



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13353/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 29th March 2019**

**Decision & Reasons Promulgated
on 9th April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**IT
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr G McGowan, Quinn, Martin & Langan, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This appeal is brought against a decision by Judge of the First-tier Tribunal David Clapham dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Iran of Kurdish ethnicity. The appellant claims to be at risk in Iran on two main grounds. The first is because he is gay. The second arose from an incident in 2011 when the appellant was working as a taxi driver. He took his nephew and his nephew's friend into town, where they displayed a Kurdish flag. The appellant

was arrested and detained for a month, during which time he was tortured and mistreated. The judge of the First-tier Tribunal made adverse credibility findings.

3. Permission to appeal was granted on the grounds that the Judge of the First-tier Tribunal had arguably erred by disregarding medical evidence which was before him. The judge had also arguably erred by failing to consider how the appellant might be treated at the border on return to Iran.
4. At the hearing before me the parties were agreed that the appeal should be remitted to the First-tier Tribunal. Mr Govan indicated that he would not seek to defend the decision of the First-tier Tribunal. Not only was there the issue of the medical reports but the judge had not made a finding on the appellant's sexuality and had not had regard to country guidance on the return of Kurds to Iran.
5. I note that the lack of a finding on the appellant's sexuality was raised in the application for permission to appeal. I am satisfied that the Judge of the First-tier Tribunal erred in law by failing to make a finding on this question, as well as by disregarding the medical reports and by not properly considering the risk at the border on return to Iran. The decision of the First-tier Tribunal is accordingly set aside.
6. In view of the extent of fact-finding which is required to re-make the decision I agree with the parties that the proper course is to remit the appeal to the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statement. The appeal is remitted to the First-tier Tribunal to be reheard before a differently constituted tribunal with no findings preserved.

Conclusions

7. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
8. The decision is set aside.
9. The appeal is remitted to the First-tier Tribunal to be reheard before a differently constituted Tribunal with no findings preserved.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. In order to preserve the positions of the parties until the appeal is finally decided I make such a direction in the following terms. Unless or until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Failure to comply with the direction may give rise to contempt of court proceedings.

M E Deans
Deputy Upper Tribunal Judge

4th April 2019