



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

Appeal Number: PA/09518/2019

THE IMMIGRATION ACTS

Heard remotely via Teams

On 16 June 2021

**Decision & Reasons
Promulgated
On 28 June 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**FMA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fadarhussain

For the Respondent: Mr McVeety, Senior Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 2 October 2020, I set aside the decision of the First-tier Tribunal. My reasons were as follows:

1. The appellant was born in 1991 and is a male citizen of Iran. He entered the United Kingdom in August 2017 claimed asylum. By a decision dated 23 September 2019, the respondent refused the appellant's claim for international protection. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 18 November 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The Upper Tribunal issued directions indicating a provisional view that the matter of error of law/setting aside of the decision may appropriately be determined without a hearing. Both parties have responded to those directions. In the light of the responses, I consider that it is both fair and appropriate for the appeal to be determined by reference to those responses only and without a hearing.

3. The respondent accepts that the first of the two grounds of appeal reveals 'a material error of law.' Mr Howells, writing on behalf of the Secretary of State, states: '[Ground 1] asserts that the FTTJ failed to apply relevant case law in her consideration of the risk to the appellant on return to Iran. In response, the respondent accepts that the FTTJ's reasoning at [36-40] for her finding that the appellant would not be a real risk on return to Iran is unclear.' As I understand the expression 'material error of law' used by Mr Howells, it appears that the Secretary of State considers that the decision of the First-tier Tribunal is legally flawed such that it should be set aside. I agree. For the avoidance of doubt, I find that the judge's finding at [40] that there is 'no reasonable likelihood that the appellant's sur place activity will come to the attention of the authorities in Iran' is not preserved.

4. The parties are not agreed as to whether Ground 1 has been established. Mr Howells writes:

This Ground asserts that the FTTJ heard in her consideration of the appellant's claim to have been a smuggler in Iran. In the respondent's submission, the FTTJ gave adequate reasons at [18-20] for not accepting this part of the appellant's claim. At [18], the FTTJ identified several material discrepancies in the appellant's evidence in relation to the nature of the goods smuggled, how the goods were transported, whether he was working in a group and how the group operated. At [19], the FTTJ identified a further material inconsistency as to whether the appellant had been involved personally in smuggling white goods.

The respondent notes that the grounds do not challenge the FTTJ's finding that the appellant was not involved with the KDPI in Iran [34] nor the FTTJ's finding that Ettlaat did not attempt to recruit the appellant as an informer within the KDPI [34].

5. The appellant's representatives have responded as follows:

The appellant continues to rely on the previous submissions [which I have also considered] and notes that there is no consideration of the clarifications made following the interview, and excessive reliance is placed on this. As such the appellant submits that focus on what is effectively a single issue drive from a series of questions, cannot be characterised as 'several material inconsistencies' such as to undermine the otherwise credible evidence given.

6. I have considered the First-tier Tribunal decision carefully. I find that I agree with the respondent's submissions. There is no reason to consider that the judge did not have regard to 'clarifications made following the interview' by the appellant; the judge made it clear [10] that she had considered all relevant documentary and oral evidence before reaching a decision. Moreover, not all the inconsistencies referred to by the judge arose from the appellant's asylum interview; that identified in the decision at [19] emerged from the appellant's oral evidence before the Tribunal.

7. I find that the error of law which both parties considered occurred in this decision does not in any way affect the findings of fact reached by the judge. Rather, the error solely concerned the application of country guidance concerning risk on return to those facts. Accordingly, I find that the findings summarised by the judge at [34-35] should be preserved. In reaching that decision I have had regard to the recent guidance contained in AB (preserved FtT findings; Wisniewski principles) Iraq [2020] UKUT 268 (IAC). However, given that I have not preserved the findings at [40] as regards the appellant's sur place activities, this aspect of the case will need to be re-examined as anticipated by the appellant's representatives in their written submissions at [10].

Notice of Decision

The decision of the First-tier Tribunal is set aside. The findings of fact summarised at [34-35] are preserved. The decision will be remade by the Upper Tribunal at or following a resumed hearing on a date to be fixed (Upper Tribunal Judge Lane, if available, otherwise any Upper Tribunal Judge/Deputy Upper Tribunal Judge; 2 hours; Manchester Civil Justice Centre; first available date; remote hearing by Skype for Business; Kurdish Sorani interpreter)

2. At the resumed hearing on 16 June 2021, Mr McVeety, who appeared for the Secretary of State, drew my attention to the following paragraph of the First-tier Tribunal decision:

30. ... I accept that the appellant holds a genuine belief in favour of greater rights for Kurdish people in Iran. I accept that because the appellant is Kurdish, he has said that he has such a belief and it would be natural for him to have such a belief, taking into account the external evidence regarding how Kurds are treated in Iran.

That finding is summarised in slightly different terms at [34], a paragraph which I expressly preserved in my error of law decision:

I do accept that the appellant is supportive of the cause of the Kurdish people in Iran. However, his support takes the form of his own political views and were it not for the asylum claim in the United Kingdom, he would not have attended demonstrations, posted on Facebook or have been political in any way.

3. As Mr McVeety pointed out, there is an obvious tension between these two paragraphs. Notwithstanding the judge's finding that, despite having

genuine separatist opinions, the appellant would not have posted on Facebook and that he only did so to support his asylum claim. However, Mr McVeety agreed that the finding at [30] engaged *HJ (Iran)* [2010] UKSC 31. It follows that, if the appellant was faced with returning to Iran, he would either delete his Facebook account or would not do so. In the first case, the finding at [30] means that he would feel compelled to silence expression of his political opinion for fear of persecution. In the latter case, he would be likely to face ill treatment in the (reasonably likely) event that the Iran authorities became aware of his posts. Mr McVeety accepted that the Secretary of State had not sought to challenge the finding at [30]. It follows, therefore, that, whatever he chooses to do with his Facebook account, he should be recognised as a refugee. In the circumstances, I allow the appellant's appeal against the decision of the Secretary of State 23 September 2019 on asylum and Article 3 ECHR grounds.

Notice of Decision

I allow, on asylum and Article 3 ECHR grounds, the appellant's appeal against the decision of the Secretary of State dated 23 September 2019

Signed

Date 16 June 2021

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.