Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07697/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 25 July 2022	**On the 05 September 2022**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH
DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

AM (IRAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F. Allen, Counsel instructed by Freedom Solicitors
For the Respondent: Ms A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 29 October 2019 First-tier Tribunal Judge Gribble ("the judge") dismissed an appeal brought by the appellant, a Kurdish citizen of Iran, against the refusal of his fresh claim for asylum. The appeal was heard under section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The appellant now appeals to this tribunal against the judge's decision, with the permission of Upper Tribunal Judge Norton Taylor.

2. It was common ground at the hearing before us that the judge's decision involved the making of an error of law and had to be set aside. Accordingly, we set aside the judge's decision and remit the appeal to the First-tier Tribunal, to be heard by a different judge. This decision sets out our reasons for accepting the concession made by Ms Everett on behalf of the Secretary of State.

Factual background

3. The appellant arrived in the UK in October 2015 and claimed asylum on the basis that he was at risk of being persecuted through wrongly being implicated in an attack on four Iranian soldiers. He also claimed to have converted to Christianity. The claim was refused. The appellant appealed. By a decision promulgated on 5 September 2016, First-tier Tribunal Judge Chapman dismissed his appeal. The appellant was not removed.

4. On 21 May 2019, the appellant made a fresh claim for asylum, providing what he claimed to be Iranian court documents demonstrating that he had been convicted of anti-regime offences and sentenced in his absence. The Secretary of State refused the fresh claim on 17 July 2019, and it was that decision that was under appeal below.

5. Before the judge, the appellant also relied on a number of social media posts and evidence that he had attended anti-regime demonstrations in the UK in order to establish a *sur place* claim. That was a "new matter" for the purposes of section 85(6) of the 2002 Act, requiring the consent of the Secretary of State. The Secretary of State consented to the new matters being considered by the First-tier Tribunal at the substantive hearing before the judge on 15 October 2019.

Decision of the First-tier Tribunal

6. The decision of the First-tier Tribunal begins by maintaining the interim anonymity order made at an earlier stage in the proceedings.

7. The judge commenced her operative reasoning at paragraph 37; she found the appellant's evidence to lack credibility. She was not satisfied as to the reliability of the court documents and rejected the invitation to depart from Judge Chapman's findings. The documents consisted of ordinary A4/A5 sheets of paper and did not feature a "wet ink" stamp. The Facebook material relied upon by the appellant was inconsistent with his case that he was illiterate, and there was no evidence from the "friends" the appellant claimed had encouraged him in his internet-based anti-regime activism. The posts were not a reflection of any genuine political opinion on the part of the appellant and had been "made opportunistically in the hope of obtaining asylum": [45].

8. As to the appellant's risk at the border upon his return, the judge found:

> "46. [The appellant] could delete his Facebook account as it is not a reflection at all of his actual beliefs. If he was stopped for interrogation on

> return, he would not be expected to lie and I accept that. However, it would not be a lie to say that he had been found to be a thoroughly unreliable witness who had lied about both his claim to be a Christian and his claim to be anti-regime in order to get asylum in the UK. He could provide the decision of Judge Chapman and this this decision to support this.
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> 47. The tribunal in *HB* found the contents of that appellant's Facebook page would become known to the authorities on return as part of the investigation of his background. It was then concluded that this would give rise to a real risk of persecution or of Article 3 [of the European Convention on Human Rights] ill-treatment. [The appellant's] situation is not similar in the context that he has fabricated 2 claims for asylum and could truthfully say they were fabrications. He could delete his account and if questioned (for example if his name is tagged and found on other accounts) again he could show the decisions of the tribunal which find he has fabricated both claims."

Error of law

9. Judge Norton Taylor granted permission to appeal on the basis that the judge may have erred by concluding that the deletion of the appellant's Facebook account, and any confirmation that he would be able to provide to the Iranian authorities that his asylum claims had been fabricated, would be sufficient to dispose of any real risk of persecution or serious harm.

10. In a departure from the Secretary of State's rule 24 notice dated 6 February 2020, Ms Everett conceded before us that the judge's analysis of the appellant's risk at the border was flawed. We agree. The premise of the judge's analysis was that the Iranian authorities, notwithstanding their well-documented highly sensitive and volatile reputation, would be placated by being told that this Kurdish appellant's extensive (c.f. [34], "*There are certainly a lot of Posts*") outward manifestation of hostility towards the regime was insincere. The judge relied on no authority to support that proposition, which assumes that the Iranian authorities are content to tolerate opposition provided it is not genuine. It also appears to contradict the country guidance given in *HB (Kurds) Iran CG* [2018] UKUT 00430 (IAC) concerning the "hair-trigger" threshold for suspicion, coupled with the potential for an extreme reaction on the part of the Iranian authorities.

11. Moreover, it is not clear that the judge addressed the full extent of what the appellant would have to tell the border authorities, since she did not make any findings in relation to his claimed attendance at anti-regime demonstrations in London. The judge focussed her *sur place* analysis on the appellant's Facebook materials. The appellant's attendance at demonstrations had featured extensively in the "new matter" material, including in the form photographs and a schedule of demonstrations attended by the appellant outside the Iranian Embassy in London: see exhibit AM3 at page 244 of the appellant's bundle. It may have been that the judge's general reference at [44] to his "*sur place* activities"

encompassed his claimed attendance at those demonstrations, but that is not clear since in the next sentence, the judge said "[t]here are certainly a lot of Posts", which implies that she had the social media material in mind. The judge did not make findings as to the prominence of the appellant's role(s) at the demonstrations, or the extent to which he would face a risk on account of his attendance at them also. We consider this lack of clarity to have infected the judge's analysis of the appellant's risk on return.

12. We also consider that the judge manifested a degree of doubt as to whether the Iranian border authorities would even believe the appellant's truthful account of having sought to claim asylum on a false basis, since she twice stated that the appellant could rely on her decision, and that of Judge Chapman, lest the authorities did not believe him. We find that the suggestion that the disclosure, to the Iranian authorities, of two decisions of the First-tier Tribunal could *reduce* the risk otherwise faced by the appellant at the border is, with respect to the judge, perverse. It seeks to impute to the Iranian authorities the very rationality and restraint which they notoriously lack and fails to engage with whether the decisions *themselves* would engage the "hair-trigger" response.

13. The judge's reasoning at [46] and [47] was also inconsistent with her decision to maintain the preliminary anonymity order made by the First-tier Tribunal, presumably (although she did not say) on account of the risk of his exposure to a real risk of serious harm if the decision were to fall into the wrong hands. Since the appellant only claimed to be at risk from the Iranian authorities, it must follow, at least in part, that the judge maintained the anonymity order in light of the risk to him from those authorities, were the decision to come to their attention. It follows that the judge made an order for anonymity preventing her decision from being disclosed to the Iranian authorities in a way that would identify the appellant, on the one hand, yet sought to rationalise her decision to find that the appellant would not be at risk at the Iranian border by the disclosure of not only her decision but the earlier decision of Judge Chapman to the Iranian authorities, on the other.

14. For these reasons, the decision of the judge involved the making of an error of law and must be set aside.

15. The judge did not expressly consider the import of the appellant's attendance at the demonstrations, nor reach findings of fact expressly to address the country guidance given by *HB*. Further, since the judge's decision was promulgated, further country guidance on Iran has been issued, *XX (PJAK, sur place activities, Facebook) (CG)* [2022] UKUT 00023, which may require a range of additional findings to be reached. In light of the extensive findings of fact which are yet to be reached, we consider that the most appropriate course is to remit the appeal to the First-tier Tribunal to be heard by a different judge, with no findings of fact preserved.

Remaining ground of appeal

16. There was a further ground of appeal, challenging the judge's reasons for rejecting the authenticity of the Iranian documents. Although the grant of permission to appeal was restricted to the risk at the border, it was not accompanied by an express decision to refuse permission in relation to ground 1, as required by *Safi and others (permission to appeal decisions)* [2018] UKUT 388 (IAC), with the effect that the appellant enjoys permission to appeal on both grounds. However, since we have already set aside the judge's decision with no findings of fact preserved, it is not necessary for us expressly to deal with this ground of appeal.

Anonymity order

17. We preserve the anonymity order that is already in force. In the light of the "hair-trigger" approach of the Iranian authorities, especially towards Kurdish people, we consider that it is appropriate for the order to be maintained at this stage.

Notice of Decision

The decision of Judge Gribble involved the making of an error of law and is set aside with no findings of fact preserved.

The appeal is remitted to the First-tier Tribunal to be reheard by a judge other than Judge Gribble.

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

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

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 their 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 Stephen H Smith Date 1 August 2022

Upper Tribunal Judge Stephen Smith