IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000679
First-tier Tribunal No:
PA/51791/2022
IA/04750/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 29 May 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

H.H.H
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Rutherford, Counsel instructed by Rodman Pearce Solicitors Ltd
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 12 May 2023

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
The First-tier Tribunal made an anonymity order. I have not been asked to rescind that order, which remains appropriate as this is an appeal on protection grounds. Unless and until a Tribunal or court directs otherwise, the Appellant [H.H.H] is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Hena promulgated on 13 February 2023 ("the Decision"). By the Decision, Judge Hena dismissed the Appellant's appeal against the Respondent's decision dated 28 April 2022 refusing his protection claim.

2. The Appellant is an Iranian national of Kurdish ethnicity. He came to the UK as a minor on 27 September 2019. He claimed asylum on 7 November 2019. By the date of the Respondent's consideration of his asylum claim, the appellant had reached the age of majority. The basis of the appellant's claim was first, that he feared the Iranian authorities due to his and his families connection to the KDPI as a consequence of which he, his father and paternal uncle were arrested in 2018 (his uncle was executed following his arrest) and, second, he feared the family of a girl he had a relationship with in Iran. He had been threatened and his father was attacked by members of her family, and they showed his father a video of the appellant and his paternal uncle distributing political materials which they threatened to hand over to the authorities.

3. In support of his claim the Appellant relied on country expert evidence from Dr Kaveh Ghobadi.

4. The Respondent did not believe the Appellant's claims. The Judge similarly found the claim not to be credible but, she did accept the Appellant may well have been in a relationship in Iran (at[27]).

5. The Appellant appeals the Decision on the following grounds:

   Ground one: the Judge erred in relation to her understanding of the chronology of the Appellant's account.

   Ground two: the Judge erred in relation to her understanding of Dr Ghobadi's evidence.

   Ground three: the Judge erred in her approach to the impact of a negative credibility finding relating to one aspect of the Appellant's claim on other aspects of his claim, and her findings are inadequately reasoned.

6. Permission to appeal was granted by First-tier Tribunal Judge Lawrence on 16 March 2023 on all grounds.

7. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to consider whether to set it aside. If the Decision is set aside, it is then necessary for the decision to be re-made either in this Tribunal or on remittal to the First-tier Tribunal.

8. I had before me a core bundle of documents relating to the appeal, the Respondent's bundle and the Appellant's bundle which were before the First-tier Tribunal. I need to refer to only limited documents as identified below. During discussions at the outset of the hearing, Mr Avery fairly and properly conceded on behalf of the Respondent that the Decision did contain errors of law. Having heard from Mr Avery and Ms Rutherford, I

accepted that concession and agreed that the Decision should be set aside and the appeal remitted to the First-tier Tribunal. I indicated that I would provide my reasons in writing which I now turn to do.

DISCUSSION AND CONCLUSIONS

9. Since the main basis of the Respondent's concession was ground one and two, I begin with these grounds. Ground one essentially asserts that the Judge made a factual mistake in her understanding of the Appellant's narrative. The Judge had available to her the Appellant's witness statement and a chronology of events. These documents make plain that the salient events core to the claim occurred on various dates in 2018. Relevant to ground one is the arrest of the Appellant and his father by the police during which they were interrogated about their KDPI activities. They were both subsequently released, the Appellant the next day, and his father 15 days later. Thereafter, it is not clear what the time period is, but it does not seem that much time elapsed between this event to when the Appellant was threatened and his father attacked by the girl's family. It was at this time the family showed a video to the Appellant's father of the Appellant and his paternal uncle distributing political materials locally.

10. This evidence is considered by the Judge at [22] of the Decision. In rejecting the evidence she finds as follows:

> "I do not find that the appellant was arrested for one day and then released. If there was footage of the family showing them to be politically active and the appellant a child at the time, was also active, it seems doubtful the authorities would accept he knew nothing."

11. The judge's rejection of the Appellant's claim to have been arrested therefore is contingent upon her view that the video footage existed at that time, and that the authorities were aware of it. It did not. According to the Appellant's account that footage is the subject of events that occurred after his arrest and release from detention. Whilst, it is not clear how the Judge could have made the error, it is appreciably clear, nonetheless, that she confused two separate events of the Appellant's claim that, on the facts before her, were presented as two separate events in time. The Judge's mistaken view of the facts is a clear and material error of law.

12. Turning then to ground two, which is similar to ground one in respect of the error. It relates to the Judge's treatment of the evidence of Dr Ghobadi. At [30] the Judge said this:

> At paragraph 77 the expert states that even if the appellant's uncle was arrested for being involved with the KDPI and executed for these activities it is unlikely that the appellant upon return would be linked to this. Further to this the Country Expert report states that the treatment of Kurds in Iran cannot be described as persecution but discrimination"

[my emphasis].

13. Whilst there is no complaint about the latter point, the former is concerning. It is worth setting out what Dr Ghobadi said at §77, namely:

> "In the light of the above, whereas it is unlikely that the Appellant on return to Iran will face severe punishment mainly for having left the country illegally, he will be detained and questioned by the Iranian authorities about his reasons for leaving Iran. Accordingly, it is likely that the authorities will find out about the Appellant and his uncle's alleged involvement with the KDPI, which in turn can significantly increase the risk for the Appellant. The likelihood that the Iranian authorities know about the Appellant's father, would depend on his activities and his profile. In that case, it is highly likely that the Appellant will come to the adverse attention of the authorities, resulting in harsh treatment, lengthy interrogation and imprisonment."

14. I make two observations. First, the Judge's summary of the expert's conclusion fails to take into account the entire substance of what is said by Dr Ghobadi, and second, and most significantly, her summary of the expert's conclusion in respect of any risk to the Appellant is diametrically opposed to what the expert stated. Again, I fail to understand how the Judge made that mistake, but she nonetheless did in her assessment of the facts.

15. I agree that the mistakes of fact committed by the Judge are material to her assessment of the Appellant's credibility, and that they in themselves are sufficient to vitiate the Decision on a point of law.

16. For these reasons, I find that ground one and two is made out. It is not necessary to deal with the other ground that raise separate and discrete issues in relation to the Judge's reasoning. The errors identified above are material and are dispositive of the appeal.

17. In light of those conclusions, it is appropriate to set aside the Decision. I do not preserve any findings.

18. Both parties agreed that it would be appropriate to remit the appeal to the First-tier Tribunal for re-hearing. I consider that course to be appropriate. The appeal needs to be heard entirely afresh. The appeal turns on issues of credibility and in fairness to the Appellant, it would be wrong to deprive him of a layer of appeal.

CONCLUSION

19. The Decision contains errors of law which are material. I therefore set aside the Decision. I remit the appeal to the First-tier Tribunal for re-hearing before a Judge other than Judge Hena . No findings are preserved.

DECISION

The Decision of First-tier Tribunal Judge Hena involves the making of material errors on a point of law. I therefore set aside the Decision. I remit the appeal to the First-tier Tribunal for hearing before a Judge other than Judge Hena.

Signed R.Bagral Dated: 21 May 2023
Deputy Upper Tribunal Judge Bagral