IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000368
First-tier Tribunal No: PA/02613/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 March 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

IMR
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance.
For the Respondent: Ms Young, A Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 27 January 2023

Order Regarding Anonymity

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

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Pickering ('the Judge') promulgated on 14 December 2020, in which the Judge

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dismissed the appellant's appeal against the refusal of his application for a grant of international protection and/or leave to remain in the United Kingdom on any other basis.

2. The Judge records that the appellant is a citizen of Iran born on 1 January 1991 although, from the age of 12, he had lived in Sulaymaniyah in the Kurdish region of Northern Iraq.
3. The Judge's findings are set out from [27] of the decision under challenge. At [28] the Judge records that there was no dispute regarding the appellant's nationality or ethnicity.
4. The Judge sets out a number of questions she was required to consider a number of which related to the appellant's prospects if returned to Iraq. The Judge quite properly finds that as the appellant is Iranian these questions are not relevant.
5. The Judge dismissed the appellant's claim to have had a relationship with a woman referred to as C, and having been targeted by her family as a result, as lacking credibility [33-40].
6. When considering the issue of whether the appellant will face any risk on return to Iran for any other reason the Judge writes:

> 42. The appellant is an Iranian national, who had lived for approximately half his life in the IKR I have directed myself to *HB,* being particularly mindful of the *hair trigger* approach of the Iranian authorities towards people of Kurdish ethnicity. Given the length of time the appellant has lived in the IKR, it is reasonably likely that he would be asked for additional questions at the point of return in Iran. I remind myself as to the appellant's circumstances in Iraq as this would be a focus of the questions asked by the Iranian authorities. He has lived with his mother and worked. There is no suggestion that his behaviour in Iraq would be seen as critical of the Iranian regime. He has not been involved with Kurdish political parties whilst in the IKR. On the specific facts of the appellant's case, I do not consider that it is reasonably likely that the appellant's circumstances relating to his residence in the IKR, are such as to excite the interests of the authorities that create a real risk to the appellant on return to Iran.

7. The appellant sought permission to appeal which was refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal on the basis it was said to be arguable the Judge erred by not considering, and by not making findings upon, whether the appellant would face very significant obstacles to his integration into Iran and by failing to assess whether returning the appellant to Iran would breach article 8 ECHR

<u>Discussion</u>

8. The appeal was listed for an Initial Error Law hearing before Upper Tribunal Judge Reeds sitting at Bradford on 30 September 2022. On that occasion the appellant was represented by counsel.
9. Judge Reeds adjourned the hearing and gave directions for the further conduct of the appeal said to arise from an issue identified at [32] of the decision of the Judge. In that paragraph the Judge wrote: "*The 276ADE point was predicated on the difficulties the appellant would experience in re-documenting. As the appellant is not an Iraqi national, he will not be returning to Iraq. Therefore, there is no issue about requiring him to the document.*"

10. The directions given by Judge Reeds provided a period by which the appellant's solicitor were to file and serve any available note completed by the advocate relating to the issues argued before the First-tier Tribunal and relevant to [32]. The Secretary of State was given a limited period in which to file any response with other case management directions being given. The directions order is dated 3 October 2022 and was served on 20 October 2022. There has been no compliance by the appellant with the direction to file further material.
11. On 1 November 2022 the Upper Tribunal received an email from Fountain Solicitors asking to be removed from the record as acting for the appellant.
12. The appeal was relisted for hearing on 6 January 2023, but that hearing adjourned as a result of the rail strike and relisted for the 27 January 2023. Notice of the date of todays hearing, specifying the date, place, and time, was sent to the appellant by post on 20 December 2022. I am satisfied the appellant has been properly served with notice of the hearing to the last residential address provided, as his address for service. A Judicial Transfer Order has been made.
13. The appellant did not attend the hearing. He has no instructed representative. No explanation for his absence was provided. No adjournment application was received that was granted. In all the circumstances there is nothing before the Tribunal today to warrant the hearing not going ahead in light of the overriding objectives and the interests of justice. The appellant has been given proper notice and has had ample opportunity to attend but has chosen not to do so. The interests of justice do not require the matter to be put off when there is no satisfactory explanation for this situation.
14. The Secretary of State did response to the directions order in the following terms:

> The Secretary of State has not received anything from the appellant or his solicitors regarding the advocate's note from the First Tier hearing and the issues argued at that hearing. The Secretary of State's has located the minute from the presenting officer at the hearing. The minute confirms that 276ADE relating to a re-integration into Iran was a live issue in the appeal. The Secretary of State therefore accepts the issue was raised before the First Tier and it has not been addressed by the First Tier Tribunal Judge. It is respectfully submitted that the error is not material for the reasons set out below.
>
> The Secretary of State submits that the error is not material and when considering the circumstances of the appellant's case, the Secretary of State struggles to see how the Tribunal would allow the appeal on this issue. The appellant's claim has been rejected to the lower standard and there is nothing within the appellant's circumstances to indicate he would not be able to re-integrate into Iran. The appellant accepts at paragraph 10 of his witness statement (page 16 appellant's FTT bundle) that he is in contact with his family in Iran. Therefore, his family would be able to support him on return to Iran. The Secretary of State relies upon what is set out at paragraph 119 of the RFRL dated 6 March 2020 (page 73 of the respondent's FTT bundle).
>
> The Tribunal is invited to find there is no material error of law and continues to rely upon the submissions made at the Upper Tribunal hearing on 30 September 2022.

15. The Judge refers to the issues she was required to determine at [21] of the decision, which arise from an earlier case management review hearing. At that point the Judge writes:

21. The appeal was the subject of a case management review ('CMR') on 25 June 2020 before First-tier Tribunal Judge Lodato, which areas of agreement and matters to be resolved were identified. In light of further discussions between the parties at the hearing, it was agreed that the issues to be resolved were as follows:

- Has the appellant a right of residence in Iraq;
- is the appellant able to secure the necessary documentation for return to Iraq;
- is it reasonably likely that the appellant had a relationship with C;
- is it reasonably likely that the appellant was targeted by C's family;
- would the appellant be at risk on return to Iraq from C's family;
- is there a sufficiency of protection available to the appellant;
- can the appellant internally relocate in Iraq;
- is the appellant at risk on return to Iran from C's family;
- does the appellant meet the requirements of 276 ADE (vi).

16. Although the appellant's place of habitual residence appears, since the age of 12, to be in Iraq, the refusal of his protection claim specifically states that if the appellant did not appeal and did not have leave to remain in the United Kingdom he will be removed to Iran.

17. The appellant was represented before the Judge and I have had sight of the skeleton argument prepared by his representatives which in relation to the last of the issues the Judge was required to consider it is written:

> Does the Appellant meet the requirements of paragraph 276 ADE (1)(vi) of the immigration rules?
>
> It is contended that there are very significant obstacles to the Appellant's return to any part of Iraq or Iran. There is a enchansed (sic) risk for the Appellant to be subject to discrimination due to his membership of a particular social group. There will be very significant obstacles in his reintegration on return.

18. Paragraph 276ADE(1)(vi) of the Immigration Rules, allows an applicant who is over the age of 18 and who has lived continuously in the UK for less than 20 years, to meet the requirements of this rule if they can demonstrate that at the date of application there would be very significant obstacles to the applicant's integration into the country to which they would have to go if required to leave the UK. It is argued the Judge did not adequately consider this aspect of the appellant's appeal.

19. The Secretary of State's case in this respect is set out in the reasons for refusal letter in the following terms:

> 118. In order to meet the requirements of paragraph 276ADE(1)(vi), an applicant must show that they are aged 18 or above and that there would be very significant obstacles to their integration into the country to which they would have to go if required to leave the United Kingdom.
>
> 119. It is not accepted that there would be very significant obstacles to your integration into Iran, if you are required to leave the United Kingdom because as previously stated you are an Iranian national who has family in the country. Your father lives in Iran, and you have aunts and cousins there. Alternatively, although they are in Iraq, your mother and her family could also support you, as they paid 5000USD for you to leave Iraq (AIR 47). In addition to this you are a healthy, young male

who speaks Kurdish Sorani, a national language of the country. You have already demonstrated considerable personal fortitude in relocating to the United Kingdom and attempting to establish a life here and you have offered no explanation why you could not demonstrate the same resolve to re-establish your life in Iran. It is therefore concluded that you have skills you could utilise upon your return to Iran, including an ability to gain lawful employment.

120. Consequently, you failed to meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules.

20. There is nothing in the Judge's determination that demonstrates an assessment of 276ADE in relation to Iran. In light of it being accepted by the Secretary of State, as per the skeleton argument, that paragraph 276 ADE of the Immigration Rules relating to reintegration into Iran was a live issue in the appeal, and in light of the Judge failing to address this issue, I find the Judge has erred in law. This is clearly a matter that required determination.

21. The key question, however, is whether that error is material to the decision to dismiss the appeal. Although the appellant has been out of Iran for a considerable number of years the evidence he provided to the Judge did not establish there are insurmountable obstacles to his reintegration. I accept that if the appellant was being returned on his own without any family support he may find it difficult, but it is clear from the evidence that the appellant has family in Iran with whom he is in contact. It is not made out they would not be able or willing to support him. This was the thrust of the Refusal Letter in relation to this point.

22. The appellant has provided no response to the Secretary of State's position. The existence of family, when combined with the appellant's own circumstances, show that he will be able to reintegrate as per Kamara. On that basis, the decision to dismiss the appeal of the Judge is not material on this point.

23. In relation to Article 8 outside the Immigration Rules, there was no evidence the appellant has family life in the UK. In relation to his private life, there is nothing in the evidence to show that by its nature it warrants a grant of leave to remain outside the Immigration Rules. Considering section 117B Nationality, Immigration Asylum Act 2002 provisions, the appellant's status has always been precarious warranting little weight being attached to his private life. Consideration of this issue on the basis of the evidence before the Judge does not warrant a finding of material legal error either.

Notice of Decision

24. There is no material error of law in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 January 2023