



IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002248

First-tier Tribunal No: PA/52887/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

25<sup>th</sup> October 2023

Before

UPPER TRIBUNAL JUDGE REEDS

Between

HP  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Wood instructed on behalf of the appellant by the IAS.

For the Respondent : Ms Z. Young, Senior Presenting Officer

Heard at (IAC) on 13 October 2023

DECISION MADE PURSUANT TO RULE 40 OF THE TRIBUNAL PROCEDURE ( UPPER  
TRIBUNAL) RULES 2008

1. The appellant appeals with permission against the decision of the First-tier Tribunal Judge Hussain (hereinafter referred to as the "FtTJ") who dismissed the appellant's protection and human rights appeal in a decision promulgated on the 10 April 2023 .
2. Permission to appeal that decision was sought and on 21 June 2023 permission was granted by FtTJ Handler.

Anonymity:

3. The FtTJ did make an anonymity order and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

Rule 14: The Tribunal Procedure(Upper Tribunal) Rules 2008: 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

4. The appellant is citizen of Iran, who appealed to the First-tier Tribunal (“FtT”) against a decision to refuse his protection and human rights claim. His claim was based on his political opinion. In a decision promulgated on 10 April 2023, the FtTJ dismissed the appeal. Permission to appeal having been granted the appeal was listed for hearing. At the hearing of the appeal, Ms Young on behalf of the respondent conceded that the decision of the FtTJ involved the making of material errors of law as set out in the appellant’s grounds. It was agreed between the parties that the FtT had materially erred in law in dismissing the appeal on protection and human rights grounds for the reasons set out in the grounds of challenge upon which permission to appeal was granted.
5. In summary, the grounds challenge the assessment of risk and that there were aspects of the assessment which did not take account of relevant factors set out in the country guidance in BA (Demonstrators in Britain-risk on return) Iran CG [2011] UKUT 36 (IAC) and specifically HB (Kurds) Iran (illegal exit; failed asylum seeker) CG [2018] UKUT 430 and by reference to the risk factors relevant to this appellant. Ms Young also referred to the challenge made to the assessment of credibility and the grounds at paragraphs 9-13 which she accepted was in error. The grounds also refers to the error of law in the assessment of the evidence from the Komala party in the context of the country information available (see paragraphs 20-22.) Other grounds refer to the assessment of the face book evidence ( paragraphs 28-30) and it is agreed by the parties that contrary to the findings made, there was evidence that there was evidence provided pre-refusal of his claim
6. The parties are in agreement that the FtTJ erred in law in his consideration of the issues of credibility and the risk on return as set out in the grounds of challenge. Both parties also agree that the points set out in the grounds, taken individually or cumulatively, establish material legal errors in the approach of the FtTJ.
7. In terms of remaking the decision, it is evident that both parties agree that the credibility findings are flawed on the protection claim so that none of the findings of fact are sustainable. Both parties have invited the Upper Tribunal to set aside the decision and in view of the fact finding that is necessary on all parts of the claim both submit that the appeal should properly be remitted to the First-tier Tribunal. I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal and have done so in light of the submissions of the parties. I have considered the issues in the light of the practice statement recited and the recent decision of the Court of Appeal in AEB v SSHD[2022] EWCA Civ 1512 and the decision in Begum [2023] UKUT 46(IAC. ) As to the remaking of the decision I am satisfied that in light of the errors of law identified and the fact findings which will be necessary, the appeal falls within paragraphs 7.2 (a) and (b) of the practice statement. I therefore remit the appeal to the First-tier Tribunal for that hearing to take place. The FtT will be best placed to consider the issues arising. It will be for the First-tier tribunal to undertake a holistic assessment of risk and credibility in the light of the evidence as a whole, including the material relied upon by the appellant and the country materials and country guidance.

8. Accordingly I am satisfied that it would in all circumstances be appropriate to set aside the decision in its entirety and for it to be remitted to the First-tier Tribunal to be heard afresh.
9. Rule 40 of the Tribunal Procedure (Upper Tribunal) rules 2008 allows the Upper Tribunal to give a decision orally at a hearing. Rule 40 (3) states that the Upper Tribunal must provide written reasons with a decision notice to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings. Rule 40 (3) provides exceptions to the rule if the decision is made with the consent of the parties, or the parties have consented to the Upper Tribunal not giving written reasons. In this case the parties consented to a decision without reasons pursuant to Rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008. I am satisfied that the parties have given such consent at the hearing.

**Decision**

10. The decision of the First.-tier Tribunal involved the making of an error on a point of law; the decision is set aside and shall be remitted to the First-tier Tribunal to be heard afresh.

*Upper Tribunal Judge Reeds*  
Upper Tribunal Judge Reeds

13 October 2023