



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003329

First-tier Tribunal No: PA/52908/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 11th of October 2023**

Before

UPPER TRIBUNAL JUDGE WILDING

Between

**SECRETARY OF STATE FOR THE
HOME DEPARTMENT**

Appellant

and

**IS
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms S Mckenzie, Senior Presenting Officer
For the Respondent: Ms K Wass, Counsel instructed by Leonard Cannings LLP

Heard at Field House on 2 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) 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 (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This appeal is brought by the Secretary of State against the decision of First-tier Tribunal Judge Rodger ('the Judge'). For ease I will refer to the parties as they were before the First-tier Tribunal.

Background

2. The appellant is a citizen of Iran, he is 19 years old now, before the First-tier Tribunal he was 18. On 21 April 2020 he applied for asylum as an unaccompanied asylum-seeking child. This was refused on 6 July 2022. He appealed against the decision.
3. The appeal was heard by the Judge on 29 June 2023. In her decision the Judge found that the appellant was at risk on return to Iran. The Judge allowed the appeal under the Refugee Convention.

The appeal

4. The respondent appealed. The basis for doing so was that the appellant had conceded at the hearing that he could not succeed under the refugee convention, as such the Judge erred by allowing it on the grounds she did.
5. Permission was granted by Judge Grimes.

The hearing

6. It was common ground between the parties that the Judge erred. She could not allow an appeal on the Refugee Convention given the appellant's concession that he could not show he was in a Particular Social Group:

"6. Ms Haybrook confirmed that the appellant would not fall into a particular social group as a young adult Kulber and asked me to allow the appeal on Article 2/3 grounds."

7. The dispute between the parties at the hearing before me was on disposal. Ms McKenzie for the respondent submitted that there remained live an Article 8 claim which the Judge had not determined. This would require determining. Ms Wass submitted that there was no challenge to the lack of an Article 8 claim in the grounds of appeal, there was no cross appeal by the appellant and so the issue was not before me. In the alternative, in light of the finding on risk on return any Article 8 claim could only be determined in the appellant's favour.

Findings and reasons

8. As noted, it was common ground that the Judge erred by allowing the appeal refugee grounds, given the concession at paragraph 6 of the decision. The Judge was correctly considering Article 3 throughout her decision, she makes numerous references to Articles 2 and 3 at paragraphs 28, 29, 31 and 33. The conclusion at paragraph 35 was plainly a mistake. Unfortunately, it is repeated under the heading "Summary of Decision", meaning the appeal was allowed on a ground that was not before her by way of a concession. Consequently, the Judge's decision has to be set aside as falling into legal error. There was no asylum claim before her to allow the appeal.
9. However, given the unchallenged findings of fact in relation to his claim and his risk on return to Iran, I remake the decision allowing the appeal on Articles 2 and 3.

10. Turning to the dispute between the parties in relation to Article 8. I consider it is simply not a matter before me. The Judge did not determine the appeal on Article 8 grounds. The respondent did not challenge this in her grounds of appeal; the appellant did not cross appeal the Judge's decision. As a result, there is no challenge to the Judge's failure to determine an Article 8 claim having already allowed the appeal on protection grounds.
11. I note that it would be unusual for such an appeal to be rejected on Article 8 grounds where there is a positive finding of risk, however, do not determine the matter as it does not form a part of the appeal to this Tribunal.

Notice of Decision

The First-tier Tribunal erred in allowing the appeal on Refugee Convention grounds.

I remake the decision allowing the appeal on Article 3.

Judge T.S. Wilding

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 5th October 2023