IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005972

First-tier Tribunal No: PA/50972/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th February 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

AUS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Gilbert, Advocate for Lighthouse Solicitors
For the Respondent: Miss Rushforth, Senior Presenting Officer

Heard at Field House on 9 February 2024

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 MADE PURSUANT TO RULE 40(3) OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Lester sent on 26 September 2022 dismissing his appeal against the respondent's decision dated 25 February 2022 refusing his protection and human rights claim.

2. The judge found that the appellant was not at risk of serious harm if returned to Iran because he has poor credibility and his actions would not place him at risk from the Iraqi authorities. He dismissed the appeal on all grounds.

3. Permission was granted by Upper Tribunal Judge Perkins on the basis that the judge arguably did not give proper consideration to the risks the appellant would face on return. Permission was granted on all grounds.

4. At the outset of the error of law hearing, Ms Rushforth, for the respondent, conceded that all of the grounds of appeal were entirely made out and that the decision was unsustainable.

5. I am satisfied that the respondent's concession is entirely appropriate. The judge manifestly failed to address the risk to the appellant on return. The assessment of risk was in a single paragraph at [39] and did not adequately engage with the relevant caselaw and how that might impact this particular appellant on return. Importantly, the judge did not apply Headnote (6) of HB (Kurds) Iran (Illegal exit: failed asylum seeker) CG [2018] UKUT 430. The appellant's evidence was that he and his mother fled to Iraq after his father was arrested when he was a young child. He has spent 18 years living in the KRI where he carried out some political activities and this, according to HB, this might impact the degree of interest in him by the Iranian authorities. The judge completely failed to undertake an assessment of this. Further the judge also failed to make any findings on what political activities the appellant carried out in Iraq.

6. I am also in agreement that Ground 2 is made out. The judge's findings on credibility are unsustainable because the judge fails to engage with the entirety of his claim and evidence, including his statement addressing the concerns of the respondent and further evidence adduced this his appeal. A simple assertion that he lacks credibility is not sufficient. In this respect I note that Ms Rushforth conceded the appeal on all grounds.

7. Finally, I am also satisfied that the judge failed to adequately address the nature and the extent of the appellant's "sur place" activities. The judge does not make findings on the number and nature of the Facebook posts, how long the appellant has been posting, the number of friends the appellant has on line and the visibility and role of the appellant at demonstrations where he is seen to be holding posters and signs.

8. The majority of the decision consists of the judge setting out standard paragraphs and cutting and pasting the appeal skeleton argument and Country Guidance into the decision. The entirety of the judge's findings and reasoning on what is an asylum claim from a Kurd from Iran, where the authorities are said to have a "hair trigger" approach to opposition particularly from Kurds and where there was a considerable degree of disagreement between the parties is found in two short paragraphs at

[38] and [39]. There are insufficient findings of fact and the reasoning is simply not adequate.

9. I am therefore satisfied in line with the concession made by Ms Rushforth that the decision contained several errors of law which are material because they are capable of affecting the outcome of the appeal. The decision is therefore set aside in its entirety with no findings preserved.

10. Both representatives agreed that the appeal should be remitted to the First-tier Tribunal because of the extent of the factual findings which need to be made and out of fairness to the appellant.

11. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing but I have summarised the reasons for the benefit of the parties and the judicial personnel involved.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law.

13. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.

14. The decision is remitted to the First-tier Tribunal for a de novo hearing before a judge other than First-tier Tribunal Judge Lester.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 February 2024