



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-
004867

First-tier Tribunal No:
PA/00420/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

MMA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Ferguson, counsel, instructed by Hanson Law
For the Respondent: Mr D. Clarke, senior presenting officer

Heard at Field House on 19 December 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 appealed the Respondent's decision dated 8 November 2022 to refuse a claim to protection on the grounds of risk from the Iranian authorities as a result of his political opinions.
2. First-tier Tribunal Judge Row ("the Judge") dismissed the appeal on protection grounds in a decision issued on 25 August 2023 ("the Decision").
3. The Appellant has appealed on various grounds including, in particular, the ground that the decision was procedurally unfair as a result of the Judge relying upon matters which were not raised or relied upon by the Respondent.
4. Permission to appeal was granted by First-tier Tribunal Judge Gibb in a decision dated 3 October 2023 in which it was decided that the Judge's reliance on matters not identified or relied upon by the Respondent did amount to an arguable error of law.
5. At the hearing before me Mr Clarke conceded that there were errors of law in the Decision as a result of the Judge:
 - a. Stating that the Appellant's identify had not been accepted when the Respondent had not disputed the Appellant's identity; and
 - b. Identifying that the application of section 8 Asylum and Immigration (Treatment of Claimants etc.) Act 2004 undermined the plausibility of the Appellant's claim when the Respondent had accepted the Appellant's explanation for not claiming asylum earlier.
6. Furthermore, Mr Clarke conceded that the errors were material given that they were at the heart of the Judge's credibility assessment.
7. Both Mr Clarke and Ms Ferguson asked that the appeal be remitted to the First-tier Tribunal to be heard de novo given that the credibility findings were so affected by the errors.
8. Given the Respondent's concessions I am bound to decide that this case should be remitted to the First-tier Tribunal for a fresh hearing, particularly given the need for the highest standards of fairness when considering protection claims.
9. I would also comment that the First-tier Tribunal (as submitted in the additional grounds of appeal) failed adequately to address country guidance caselaw: in particular, BA (demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36, Danian v SSHD [1999] EWCA Civ 3000, and XX (PJAK - sur place activities - Facebook) Iran CG [2022] UKUT 00023.
10. The Appellant should be aware that this decision does not mean that the next tribunal will allow the appeal. His case will be heard afresh and may be allowed or dismissed by the First-tier Tribunal.

Notice of Decision

1. The First-tier Tribunal decision involved the making of an error on a point of law.
2. The case is remitted to the First-tier Tribunal for a rehearing of the appeal. Judge Row is excluded.

Tracey Bowler

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21/12/2023