



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005361
First-tier Tribunal No:
PA/00828/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 March 2024

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

NAH
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No attendance (Litigant in Person)

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard remotely at Field House on 13 March 2024

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. To avoid confusion, the parties are referred to herein as they were before the First-tier Tribunal.
2. By the decision of the First-tier Tribunal (Judge Seelhoff) dated 16.11.23, the respondent has been granted permission to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Handler) promulgated 16.10.23

allowing the appellant's appeal against the respondent's decision of 31.8.22 to refuse his further submissions (FS) made on 27.6.22 in support of a claim for international protection first made on 16.2.16. The respondent's decision was reviewed on 9.8.23 but the refusal maintained.

3. There was no attendance by or on behalf of the appellant. On examination of the Upper Tribunal's case file, I was satisfied that written notice of today's hearing was sent on 22.2.24 by post to the address in Oldham provided by the appellant, and to the Hotmail email address he had provided. Mr Terrell confirmed that both email and physical addresses were the same as those held by the Home Office for the appellant. There being no explanation for the appellant's absence, I was satisfied that it was in the interests of justice to proceed with the appeal hearing.
4. Following the helpful oral submissions of Mr Terrell, I reserved my decision to be given in writing, which I now do.
5. The relevant background is that the appellant's appeal against refusal of his protection claim, based on the Convention grounds of political opinion, was first dismissed by the First-tier Tribunal on 15.2.17. Since then, he has lodged FS on four separate occasions. A further First-tier Tribunal appeal was dismissed on 8.2.21. In that 2021 appeal, First-tier Tribunal Judge Saffer concluded that the appellant was not Iranian and not a genuine refugee.
6. I note that in the review, the respondent asserted at [9] of that decision that the appellant would not be at risk on the basis of his *sur place* activities. However, at the First-tier Tribunal appeal hearing before Judge Handler on 3.10.23, the Home Office Presenting Officer, Mr Delacruz, stated that the respondent did not rely on that assertion. I find that somewhat strange, in light of the decision of the Upper Tribunal in XX (P)AK - sur place activities - Facebook) Iran CG [2022] UKUT 23 (IAC). However, that is not an issue in this appeal.
7. The appellant's nationality was in dispute at the 2023 First-tier Tribunal appeal. He maintained his claim to be Iranian, a claim rejected by the respondent but no positive assertion was made of any alternative nationality. Before Judge Handler, the respondent accepted that if he is genuinely an Iranian Kurd, the appellant's social media (Facebook) posts would put him at risk on return to Iran. Based on an identification document (shunasnamah) produced by the appellant, despite not being authenticated by any expert evidence, Judge Handler found the document reliable and that his is Iranian as claimed and consequently allowed the appeal.
8. In summary, the grounds submit that the First-tier Tribunal erred in law when proceeding on the basis that the appellant's disputed nationality had to be established to the lower standard of proof when the correct standard of proof is on the balance of probabilities.
9. In granting permission on all grounds, Judge Seelhoff noted that whilst the respondent's representative at the First-tier Tribunal appeal hearing conceded the applicable standard of proof, "an error of this sort clearly has the potential to be material, given that it has led to the revisiting of previous adverse credibility findings".
10. Before me Mr Terrell very fairly pointed to the authority of RM (Sierra Leone) v Secretary of State [2015] EWCA Civ 541, in which after reviewing Abdullah [2013] EWCA Civ 42 and MA (Ethiopia) [2009] EWCA Civ 289 the Court of Appeal held at [35] that "*What emerges from those cases - and would in truth be clear enough even in the absence of authority - is that what standard of proof applies to the question of an applicant's nationality depends on the legal issue to which it is relevant. If it is relevant to whether he will suffer persecution (whether by*

reference to the Refugee Convention or article 3), the lesser standard will apply. But if it is relevant to some other issue – such as whether it is in fact possible in practice for him to be returned, and any rights that may accrue if it is not – the standard is the balance of probabilities.”

11. Mr Terrell also pointed me to the respondent’s own Policy Guidance of 2.10.17 ‘Nationality: dispute, unknown and other cases’, which at page 14 states: *“In unknown nationality cases, the Home Office is not asserting that the claimant holds a particular nationality. The burden of proof rests with the claimant to show that they qualify for protection under the Refugee Convention and the European Convention on Human Rights, including evidencing their nationality. The standard of proof that the claimant needs to meet is the lower standard, they just need to show a reasonable degree of likelihood (or real risk) that they will face persecution.”*
12. Mr Terrell accepted that the issue of nationality in this case bore directly on the Convention claim and that, therefore, the correct standard of proof was that of a reasonable degree of likelihood, as the judge applied at [26] of the decision when finding that the identity document is reliable *“and therefore that he has shown that there is a reasonable degree of likelihood that he is a national of Iran. I emphasize that it is because the standard of proof is a reasonable degree of likelihood that I find in the appellant’s favour and depart from previous findings made regarding the appellant’s nationality”*.
13. Mr Terrell also felt constrained by the concession made at the First-tier Tribunal appeal hearing before Judge Handler recorded at [9] of the decision, where the Home Office Presenting Officer, Mr Delacruz, *“confirmed that if the appellant showed that there was a reasonable degree of likelihood that he was a national of Iran, his appeal would succeed.”*
14. It follows that the respondent’s appeal cannot succeed and must be dismissed as no material error of law has been identified in the making of the decision before the First-tier Tribunal.

Notice of Decision

The respondent’s appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands as made.

I make no order as to costs.

DMW Pickup

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Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 March 2024