



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-002304

First-tier Tribunal No:
PA/54235/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 20th of September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**F A R
(ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, counsel, instructed by CK solicitors
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House, on 23 August 2024

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. I make an anonymity direction because this appeal arises from the appellant's protection claim.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge E R Bennett, promulgated on 15/03/2024, which dismissed the Appellant's appeal.

Background

3. The Appellant is an Iranian Kurd who was born on 19/02/2005. He entered the UK when he was still a child on 08/10/2021 and claimed international protection that day. The respondent refused his application on 06/07/2023.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. On 15/03/2024, First-tier Tribunal Judge E R Bennett ("the Judge") dismissed the appeal on all grounds.

5. The Appellant lodged grounds of appeal, and, on 7 June 2024, Upper Tribunal Judge Owens granted permission to appeal by saying

1. It is arguable that the decision not to admit the appellant's further evidence of his political activities and Facebook activity was procedurally unfair, not least because the judge has not explained the reasons behind this decision.

2. It is also arguable the judge made an error of fact at [27(a)] and [29(a)] when he found there was an inconsistency in relation to whether the appellant spoke to the man to whom he was delivering leaflets.

3. The appellant's representative will need to address the materiality of these errors at the hearing.

The Hearing

6. Mr Sharma, for the appellant, moved the grounds of appeal. He told me that the three grounds of appeal

(i) The Judge's consideration of the appellant's credibility is flawed

(ii) The Judge failed to resolve a central issue, and

(iii) The Judge's decision not to allow evidence tendered late to be received was unjust.

7. Mr Sharma explained that a bundle of evidence was served two days before the hearing date. When it was tendered at the hearing, the Judge selected the appellant's supplementary witness statement from the bundle and allow that to be received but refused to accept the rest of the items in the bundle into evidence. Mr Sharma said the refusal to accept that evidence was prejudicial to the appellant's case and is unexplained. He referred me to Denton & Others v TH White Ltd [2014] EWCA Civ 906, and told me that the principles set out there were not followed.

8. Mr Sharma took me to [4] of the decision and said that there the Judge simply records the refusal to accept evidence tendered late but gives no reasons for refusal. The Judge makes no reference to the Denton principles. He said that is a material error of law which infects the Judge's overall credibility assessment.

9. Mr Sharma moved the remaining grounds of appeal, saying that the refusal to accept the evidence that was tendered late prevented the Judge from properly address the credibility of the appellants sur place claim, and prevented the Judge from resolving perceived conflicts in evidence about what happened to the appellant in Iran. He asked me to set the decision aside and remit this case to the First-tier Tribunal for a *de novo* hearing.

10. For the respondent, Ms Lecointe resisted the appeal. She told me that if there is an error in the decision it is not material. Ms Lecointe said that the grounds of appeal are merely a disagreement with findings of fact which were well within the range of reasonable findings available to the judge.

11. Ms Lecointe took me through the decision and said that the Judge carefully made findings of fact, before taking guidance in law and reaching conclusions well within the range of reasonable conclusions available to the Judge. Ms Lecointe asked me to dismiss the appeal and allow the decision to stand.

Analysis

12. There are two chapters to the appellant's claim. The first relates to activities in Iran and his reason for leaving Iran, the second is his claimed political activity in the UK. It is an accepted fact that two days before the hearing in the First-tier Tribunal the appellant intimated a new bundle of documents to the respondent. That bundle contains an updated witness statement, four photographs, a printout of a Facebook post, and 90 pages of

PDF files. Those documents were intended to support the appellant's sur place claim.

13. At [4] of the decision the Judge records that when the supplementary bundle was tendered he selected the updated witness statement from the supplementary bundle, and then refused to allow the remaining documents to be received into evidence.

14. Standard directions are that documentary evidence must be served no later than five days before the hearing. The bundle was tendered late. The overriding objective found in rule 2 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 requires the Judge to deal with the case fairly and justly.

15. The Judge could have used the powers in rule 4 of the 2014 procedure rules to allow the documentary evidence to be received, or he could refuse to allow the documents to be received.

16. The Judge chose to refuse to allow the documents to be received, but before he did so he selected one of the items tendered and allowed that solitary item to be received. The Judge deals with the late productions at [4] of the decision where he simply records that he declined to allow the documents to be received. The Judge does not say why he reached that decision.

17. Failing to give a reason for excluding evidence is an error of law. In a case where the evidence is likely to be useful in determining a sur place claim it is a material error of law. At [26] the Judge reminds himself to consider all of the evidence in the round, but still does not explain why evidence that was tendered three days late does not merit consideration.

18. Mr Sharma was correct to say that the third ground of appeal informs the first and second grounds of appeal. The Judge carries out a detailed analysis of the evidence that he did not exclude. The Judge rejected the appellant's account of what happened in Iran and his reasons for leaving Iran, but the evidence which had been excluded is evidence which should have been analysed when considering the appellant's sur place claim.

19. Because the decision is tainted by material errors of law it is set it aside. It is a matter of agreement that a fresh hearing is necessary before the First-tier Tribunal.

Remittal to First-Tier Tribunal

20. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

21. I have determined that the case should be remitted because of a procedural irregularity causing unfairness. None of the findings of fact are to stand and a complete re-hearing is necessary.

22. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge ER Bennett. A Kurdish Sorani interpreter will be required.

Decision

The decision of the First-tier Tribunal is tainted by a material error of law.

The Judge's decision promulgated on 15 March 2024 is set aside.

The appeal is remitted to the First-tier Tribunal to be determined af new.

Signed **Paul Doyle**
23 August 2024
Deputy Upper Tribunal Judge Doyle

Date