IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003505

First-tier Tribunal No: PA/51119/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 November 2024

Before

UPPER TRIBUNAL JUDGE PINDER

Between

M M
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms B Asanovic, Counsel instructed by Fisher Jones Greenwood LLP.
For the Respondent: Mr E Tufan, Senior Presenting Officer.

Heard at Field House on 9 October 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. The Appellant appeals with the permission of First-tier Tribunal Judge Mulready against the decision of First-tier Tribunal Judge Lewis. By his decision of 30th January 2024, Judge Lewis ('the Judge') dismissed the Appellant's appeal against the Respondent's decision to refuse his protection and human rights claims.

Background

2. The Appellant is an Iranian national of Kurdish ethnicity, who left Iran illegally with his mother. The Appellant arrived in the UK on 30th April 2021, aged 17 years old, having he claims been separated from his mother on their journey from Iran.

3. The Appellant's protection claim is grounded in an imputed political opinion, as a result of his father being a member of the Kurdish Democratic Party of Iran ('KDPI'). When living in Iran, the Appellant lived with his parents and KDPI meetings were held in the family home. When the Appellant's father was alive, his mother and brother would also assist and following the death of the Appellant's father from a heart attack, it is the Appellant's claim that his mother and brother would continue to assist the party. For instance, his mother would help by making and repairing clothes for KDPI members to wear and the Appellant's brother would meet two Peshmergas twice a week at the family home. It is the Appellant's claim that on one night the family home was raided by Etelaat. The Appellant's brother and the two Peshmergas resisted Etelaat and the Appellant, with his mother, managed to flee the family home.

4. The Respondent refused the Appellant's protection claim on 3rd February 2023, taking issue with the Appellant's knowledge of his father's position and responsibilities and the family's involvement with the KDPI. The Appellant appealed against that decision. Before the Judge, the Appellant was represented by Ms Asanovic of Counsel, as he was before this Tribunal. The Respondent was represented by a Presenting Officer.

5. At the Appellant's application, the Judge agreed to treat the Appellant as a vulnerable witness: he was a minor when he arrived in the UK and when he first advanced his protection claim, albeit he had turned 18 years old when he was interviewed by the Respondent as part of his claim. The Judge also noted that the events he relied upon spanned his childhood and recorded this in his decision at [17]. The Judge then heard oral evidence from the Appellant and submissions from the advocates before reserving his decision.

The Decision of the First-tier Tribunal Judge

6. In his reserved decision at [25], the Judge assessed several of the reasons given by the Respondent for rejecting the Appellant's account finding with reasons that these were unsatisfactory. At [26], the Judge then considered what he described as a significant discrepancy between the different retellings of the Appellant's account of the raid on the family home by Etelaat, at the core of the Appellant's claim. The Judge ultimately found that this discrepancy was such that it undermined the Appellant's credibility and the Judge was not prepared to accept – even at the lower standard of proof applicable – that the Appellant had been truthful.

7. The Judge then set out at [27] what he considered to be the discrepancy, which lies in how the Appellant described the raid, and fleeing this, first in his initial witness statement and then at questions 80-83 of his asylum interview. I have recorded these accounts further below in my decision. At [28], the Judge refused to find that this discrepancy was of minor significance and that it should not be held against the Appellant. The Judge also considered that even allowing

for the Appellant's vulnerability, and for what he described as "a possibly rapid sequence of traumatising events", the Judge did not consider there to be any adequate explanation for such a fundamental discrepancy. The Judge emphasised that he did not accept that there was any realistic scope for confusion as to whether the Appellant only became aware of the raid when shooting began or became aware of it once he was told to run away because the security services were at the door, prior to any shooting commencing.

8. At [29]-[32], the Judge considered that the Appellant was not recounting actual events and thus, that his claim for protection could not succeed. The Judge did also consider at [31] that the type of raid that the Appellant had described was plausible since raids of this type are carried out by the security services but any such plausibility did not amount to a significant or reliable indicator of the Appellant's credibility for the reasons that the Judge had already considered.

9. From [34] to [37], the Judge then assessed the Appellant's alternative claim, based on a well-founded fear of serious harm/persecution as a result of having left Iran illegally, being returned as a failed asylum seeker from the UK and being Kurdish. Following a brief consideration of the Appellant's country expert report, the Judge found at [35] that the Appellant had not provided a satisfactory evidential basis to justify departure from the country guidance case of *SSH and HR (illegal exit: failed asylum seeker) Iran CG* [2016] UKUT 308 (IAC). The Judge proceeded to dismiss the Appellant's protection claim and following consideration of his claim raised under Article 8 ECHR, he too dismissed that aspect of the Appellant's appeal.

The Appeal to the Upper Tribunal

10. Permission was granted at first instance by First-tier Tribunal Judge Mulready. The Appellant pursued two grounds, which can be summarised as follows:

    (i) Ground 1 – The Judge failed to give anxious scrutiny to the Appellant's claim, pursued in the alternative, namely that he would be at risk on return on account of being a Kurd, who exited Iran illegally and who had evaded military conscription. In particular, the Appellant submitted that the Judge had failed to give anxious scrutiny to the matters opined in the Appellant's favour by his country expert, Professor Bluth.

    (ii) Ground 2 – The Judge failed to take relevant matters into consideration when finding that the Appellant's accounts were discrepant and in the alternative, whilst having stated that he took the Appellant's vulnerability into account, the Judge did not give a reasoned conclusion as to why his vulnerabilities could not reasonably explain what the Judge found to be the fundamental discrepancy in the Appellant's accounts, such as to be fatal to the credibility of his account.

11. Judge Mulready considered that both grounds were arguable. On Ground 2, Judge Mulready noted that the Judge had arguably not included a reasoned consideration of the extent to which the Appellant's vulnerabilities was an element of that discrepancy or lack of clarity, as required by the relevant Practice Direction. This was despite the Judge noting the Appellant's vulnerabilities and rejecting this as an explanation for the discrepancy. On Ground 1, Judge Mulready stated that it was arguable that the Judge had not taken full account of all relevant factors in the expert's evidence, in particular in

regards the cumulative effect of the various risk factors for Kurdish persons returning to Iran.

12. The Respondent had filed and served a response to the grounds of appeal under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The Respondent maintained that the Judge had taken into full consideration the opinions of the country expert and directly engaged with these at [36]. This was sufficient of the Judge to demonstrate that he had considered the report, addressed the submission relied upon by the Appellant and the reasons why he rejected the same. With regards to the Appellant's second ground, the Respondent set out that the Judge had carefully recognised the Appellant's vulnerability at [17], directly referring to the 2010 Presidential Guidance Note and the case-law relied upon by the Appellant in his skeleton argument. The Judge had also further considered these issues at [18]-[20] and at [28]. The Judge had clearly stated that his reasoning for rejecting the Appellant's account included consideration of the Appellant's vulnerability. There was also no medical or other evidence before the Judge as to any impact that any trauma experienced by the Appellant may have had on him.

Submissions

13. For the Appellant, Ms Asanovic relied on her skeleton argument prepared for the hearing before me. She focused in the first instance on the Appellant's second ground of appeal since this addressed the Appellant's primary claim, namely to be at risk as a result of an imputed political opinion through association with his father, a KDPI member. Ms Asanovic very fairly acknowledged that the Judge had noted the Presidential Guidance and recorded that he agreed to treat the Appellant as a vulnerable witness, on account of his age during the claimed events and at the times that he claimed asylum and recounted those events.

14. Ms Asanovic took me through the aspects of the Appellant's accounts (re-produced below) that the Judge found to be fundamentally inconsistent with each other, and so fundamentally so that the Judge did not accept the Appellant's account of being at risk for that same reason. Ms Asanovic submitted that, when considered carefully, the Appellant's written evidence, in the form of his asylum interview and witness statements, were simply describing the same events, with differing amounts of detail. She emphasised that there was no actual discrepancy and that, if there ever was the need to take into account of the witness' age when assessing whether or not any differences amounted to inconsistencies, this was such an example.

15. With regards to the expert report and the argued failures of the Judge pleaded under the Appellant's first ground, Ms Asanovic relied upon the Court of Appeal's judgment in *S and Others v SSHD* [2002] EWCA Civ 539, where Laws LJ observed at paragraph 29 of his judgment that fact-finding tribunals are often bound to place heavy reliance on the views of experts and specialists. Against the background of country conditions in Iran, described in country guidance as engaging a hair trigger approach, Ms Asanovic submitted that the opinions of Professor Bluth in the report relied upon by the Appellant and as summarised at paragraph 11 of her skeleton argument required anxious scrutiny. At [36] the Judge effectively found that the bulk of the report related to matters concerning activists and demonstrators and did not apply or have analogous application to non-political returnees. Ms Asanovic submitted that there was no reference at [36] of the cumulative effect of the Appellant's ethnicity and of his evasion of

military conscription - the Judge only referring only to his illegal exit and being a failed asylum seeker.

16. Mr Tufan opposed the appeal, relying on the Respondent's Rule 24 Reply, and in response, submitted that the Judge had considered the relevant answers of the Appellant from his asylum interview at [27] and the Judge's conclusions were reasoned and open to him. Mr Tufan reiterated that the Judge did not have to refer to every single piece of evidence and it was quite clear from the determination as a whole that the Judge had considered the evidence in its totality and taken into consideration the Appellant's age and consequent vulnerabilities. Mr Tufan argued that the Appellant was effectively seeking to show that the Judge's conclusions at [26]-[29] were irrational and the Appellant had not demonstrated this high threshold.

17. With regards to the Appellant's ground of appeal concerning Professor Bluth's report, similarly Mr Tufan submitted that the Judge had referred to the expert report in sufficient detail. The Judge had found that this was not sufficient to permit the Judge to depart from country guidance. Mr Tufan reminded me of the applicable test that is required to justify a departure from country guidance, namely that *"very strong grounds supported by cogent evidence"* were required to be given by a judge in order to justify departure from country guidance - *SG (Iraq) v SSHD* [2012] EWCA Civ 940. Mr Tufan submitted that the Appellant had simply not provided such cogent evidence, even in the form of Professor Bluth's report.

18. I reserved my decision at the conclusion of the submissions.

Analysis and Conclusions

19. I will first address the Appellant's second ground of appeal, as pleaded in writing. This is because it concerns the Appellant's primary case and the core of his account, as presented to the Judge, and as acknowledged by Ms Asanovic orally before me.

20. Before I do this, it is necessary for me to summarise the aspects of the Appellant's evidence that the Judge found difficulty with and which led him to find that the Appellant's account had been inconsistent and therefore not credible. I summarise these as follows, each in turn and in chronological order of when the respective account was given by the Appellant:

    (i) The Appellant's witness statement dated 7th September 2021, which he submitted to the Respondent in support of his protection claim. At §13 of his statement, the Appellant wrote as follows:

        > One night we were at home and the house was raided by Etellaat. I became aware of this when shooting happened. Apparently my brother and two Peshmergas had resisted the raid and retaliated against the Etellaat forces. In that event my mother quickly grabbed my hand and led me away. We went to one of the neighbours and he managed to take us to *X* (anonymised). During that event we later learnt that my brother and both Peshmergas had lost their lives.

    (ii) The Appellant's answers at his asylum interview at questions 80, 82 and 83. I re-produce these in their entirety:

> Q80 – Where were you when your house was raided by Etelaat and what time was it?
> A – before the fight broke out, my mother took me away from the house and took me to a neighbouring house, then the fight broke out, our neighbour had a car and took us to *X* by their car.
>
> (…)
>
> Q82 – How did you find help in the village in the middle of the chaos, who was willing to put their lives in danger to help you?
>
> A – They had not got very close and the fight had not started and they were still talking to each other. IO - who was talking to each other? A - my brother and peshmergas, they were all talking. IO - Why did your mother and you run if it was just your brother and peshmergas talking? A - they were carrying guns, and there was no point for us to be there, because we had no gun. IO - please explain to me what was going on between the peshmergas and your brother? A – Etelaat were saying don't move, you are surrounded, and the peshmergas were saying we are not surrounding, not handing ourselves over to them.
>
> Q83 – How was it possible that you and your mother escaped and the Etelaat did not follow you?
> A – I don't know that before Etalaat approaching completely, we went to neighbouring house."

(iii) The Appellant's second witness statement dated 16th May 2023 relied upon in support of his appeal before the Judge. At §5 of that statement, the Appellant stated as follows:

> I want to clarify that with regard to the raid on the House by Etelaat, before the raid happened and before people came in there was shouting and screaming, and Etelaat were demanding that whoever was inside should surrender themselves. My mother and I then escaped through the back door which leads to an alleyway and we went to the neighbours. My mother and I escaped just before the shooting and firing happened but we could still hear the shooting happening.

21. In order to illustrate her submission, Ms Asnovic asked me to consider what a 'raid' meant to a child, whether this meant that shooting had already started or that something else might have happened and then the shooting started. At the time of the Appellant's first statement, the Appellant would have been 17 ½ years old and approximately 6-8 months would have passed since the event he was then recounting.

22. At [26], the Judge noted that the Appellant attempted to address this issue by way of a single supplementary question asked in examination-in-chief. The Judge then extracted the relevant parts of §13 of the Appellant's first witness statement and Q80 of his asylum interview at [27], making a brief reference also to the Appellant repeating at questions 82 and 83 of the same interview that he and his mother, having become aware of the presence of Etellat, were able to get away before any fighting started.

23. As I have already recorded above, the Judge concluded at [27] that the Appellant's vulnerability as a result of his age was not an adequate explanation for what he found to be a fundamental and significant discrepancy. Having considered the parties' respective submissions and the Judge's decision very carefully, I am satisfied that the Judge has erred in law for the reasons articulated by Ms Asanovic on this issue. The Judge did not give any reasons for his conclusion that the Appellant's age and consequent vulnerability was not an adequate explanation for any differing accounts, save for re-asserting that there was no realistic scope for confusion. There is considerable force in Ms Asanovic's submission that a 'raid' could mean one sequence of events to one person and a slightly different sequence of events to another, let alone a child, and without necessarily detracting from the fact that Etelaat had attended the Appellant's family home with intentions to cause difficulties for the Appellant's family.

24. I also consider that the Judge adopted an overly forensic approach to the Appellant's accounts, as recorded in his two witness statements and his asylum interview. Placing to one side for a moment the Appellant's age, it is in my view important to note that the Appellant gave his statements through an interpreter to his legal representatives and again through a different interpreter when interviewed by the Respondent. I consider that the use of the term 'event' at §13 of his first statement is rather vague and does not support the Judge's interpretation that the Appellant was taken away from the house after shooting had started. My observations immediately above on the use of the word 'raid' also apply here. It is not clear in my view from §13 that the Appellant is stating that he left after shooting began. Similarly, the wording at §13 could also indicate that the Appellant later learnt of the significance of this event, having heard the shooting.

25. Considering the lower burden of proof that applied and the Joint Presidential Guidance that reminds judges that children often do not provide as much detail as adults in recalling experiences and may often manifest their fears differently from adults, I am satisfied that the Judge's forensic approach at [27]-[28] is a misdirection in law. It was incumbent of the Judge to look at the Appellant's accounts in the round, with his vulnerabilities in mind and taking into consideration also the Judge's observation at [31] that the Appellant's account was not inherently implausible. In my view, it is not possible to discern why the Judge did not accept that a child might express matters of timing and understanding differently - timing, as far as these relate to when the shooting started and when he was taken from the house by his mother, and understanding, as far as the Appellant was recounting his understanding of the raid, both during the event itself and what he may have come to learn subsequently.

26. In light of the above, I am satisfied that the Judge has materially erred in law. As the errors committed concern the core of the Appellant's account, I set aside the Judge's decision to dismiss the appeal pursuant to s.12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. It is not necessary for me to determine the Appellant's remaining ground relating to the Judge's approach to Professor Bluth's report. This is because a decision will need to be re-made on the Appellant's alternative case, to which Professor Bluth's report goes, and that new decision will be informed by any findings of fact reached on the Appellant's primary case.

27. With regards to disposal, since the outstanding matters relate to the credibility of the Appellant's account, it is appropriate pursuant to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal at [7.2] to remit the matter back to the FtT for a hearing *de novo*, with no findings preserved. This was the course that Ms Asanovic advocated on behalf of the Appellant and Mr Tufan did not make any positive case either way and left the issue of disposal to me to determine.

Notice of Decision

28. The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand.

29. The Appeal is remitted to the First-tier Tribunal for a hearing *de novo*, before any Judge of the First-tier Tribunal, other than Judge Lewis.

Sarah Pinder

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 November 2024