IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003880

First-tier Tribunal Nos:
PA/54130/2023
LP/03328/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of December 2024

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

MA
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J Collins, counsel instructed by Montague Solicitors
For the Respondent: Ms S Nwachuku, a Senior Home Office Presenting Officer

Heard at Field House on 7 November 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. This is my oral decision which I delivered at the hearing today.

The Appeal

2. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Bart-Stewart, who in decision sent out on 5 June 2024 dismissed the Appellant's appeal based on protection and human rights grounds.

3. Permission to appeal had been refused by the First-tier Tribunal Parkes but was granted by Upper Tribunal Bulpitt by way of a decision dated 4 September 2024.

The Grounds of Appeal and the Hearing Before Me

4. The Appellant relies on three grounds of appeal which were well drafted by Ms S. Panagiotopoulou of counsel. Mr Collins had also provided me today with a copy of a decision of the Court of Appeal in *FA (Iran) v the Secretary of State for the Home Department* [2024] EWCA Civ 149 which was handed down on 22 February 2024. Elizabeth Laing LJ provided the only real reasoned judgment with which Singh and Underhill LJJ agreed.

5. Mr Collins relied on the grounds of appeal. He also relied on paragraph 71 of *FA (Iran)*, in particular the latter part of paragraph which states as follows, "It also erred in law by failing in the light of its limited findings and the country guidance cases, to explain how it was able to conclude that the Appellant would not be at risk on return."

6. Ms Nwachuku helpfully set out in some detail her response to the Appellant's grounds of appeal, which were supported by a Respondent's Rule 24 response dated 17 September 2024.

7. Ms Nwachuku said in summary that there was no material error of law in the Judge's decision. She referred to Ground 1 and said what was alleged to be unclear was simply not the case. She referred to various parts of the Judge's decision and said that there were clear findings by the Judge, for example at paragraph 15 of the decision.

8. Ms Nwachuku submitted that the Judge had looked at how the property had been raided and she submitted that Ground 1 had no merit. In respect of Ground 2, it was submitted the language which being used by the Judge was actually language from the Country Guidance case. The Judge had used the words correctly and had considered properly the overall profile when assessing the risk on return. There was reference, for example, to the size of the banner and whether someone is perceived as protesting. In respect of the second limb to Ground 2, it was submitted that related to a contention that the Judge had failed to take into account medical evidence but when one looked at that evidence at page 18 of the bundle, it was not clear how that was relevant. Although it was accepted

that the Judge did not mention the evidence, this was not, for example, a medicolegal report. This medical evidence had merely said that the Appellant had scars and how the Appellant said he had attained that scarring. The doctor had no qualifications in respect of being able to report on scarring and indeed his name was not even at the top heading of the medical letter. The document did not prove anything, it was submitted.

9. In respect of Ground 3, I was taken to the country guidance case and it was submitted that there was no material error of law. It was submitted that the Judge had correctly referred to the subparagraphs in the headnote. Reference to the other parts of the headnote did not assist. In relation to *FA (Iran)*, Ms Nwachuku said that this did not directly relate to the points. In this case there was no error in respect of the Judge's findings. At paragraph 21, the Judge had said there was no significant role or chanting by this Appellant.

Consideration and Analysis

10. I am grateful to the parties for their clear and helpful submissions. In my judgment there is a material error of law in the Judge's decision. The material error of law is contained in Grounds 2 and 3. In respect of Ground 2, in my judgment, even though the medical letter is limited in terms of the references which it makes, nonetheless, it tended to corroborate the Appellant's claim of ill-treatment that he claims to have suffered when he was in detention. It is accepted by the Respondent that there is no mention of this medical letter in the Judge's decision. Reminding myself the standard of proof which applies and reminding myself that anxious scrutiny considerations apply in this protection claim, in my judgment the omission to give any weight to this medical letter evidence is a material error of law.

11. Ground 3 relates to the application of the relevant Country Guidance of *HB (Kurds) Iran CG* [2018] UKUT 430.

12. In this assessment, as Mr Collins submits and as paragraph 71 of *FA (Iran)* provides, what was required was for the Judge to set out the various aspects of the case and to evaluate whether or not, in this particular case, there may or may not be a risk to the Appellant. Whilst I heard persuasive submissions today by Ms Nwachuku, I am unable to agree with her. In my judgment paragraphs 21 to 23 of the Judge's decision do not adequately deal with the issues which were before the Judge. In particular, there were various aspects which the Respondent had accepted in relation to this Appellant and in the circumstances, further detailed analysis was required before the Judge dismissed the appeal to explain why this did not fall into the category of cases which ought to be allowed following the Country Guidance.

13. Because I have concluded that there is a material error of law in the Judge's decision then the decision must be set aside. I canvassed with the

parties the appropriate course if I was to find that there was a material error of law.

14. I apply *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principles set out in paragraph 7 of the Senior President's Practice Statement. I take into account the history of the case, the nature and extent of the findings to be made and I consider paragraphs 7.1 and 7.2 of the Senior President's Practice Statement.

15. I conclude that the matter be remitted to the First-tier Tribunal for a complete re-hearing.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

There shall be a re-hearing at the First-tier Tribunal. None of the current findings shall stand.

Abid Mahmood

Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 November 2024