IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2024-004026**

First-tier Tribunal No:
PA/561514/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd December 2024

Before

UPPER TRIBUNAL JUDGE RIMINGTON

DEPUTY UPPER TRIBUNAL JUDGE M BUTLER

Between

OM
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr F Aziz instructed by Lei Dat and Beig
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

Heard at Field House on 29 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. The appellant, an Iranian national of Kurdish ethnicity, challenges the decision of First-tier Tribunal (FtT) Judge CJ Williams (the judge) promulgated on 19th July 2024 dismissing the appellant's appeal on protection, humanitarian protection and human rights grounds. The appellant's case is that he was working as a kolbar (smuggler) transporting political materials for the KDPI with his friend. That account was rejected by the judge on the grounds of credibility.

2. There were three grounds of appeal. When making adverse credibility findings the judge erred by misconstruing the evidence as follows:

   (i) At [11] the judge failed to consider, when criticising the appellant's knowledge of the packets being smuggled, the appellant's explanation in his rebuttal statement explaining that his friend had told him that the materials he was smuggling were political.
   (ii) At [13] the judge refers to the circumstances of the appellant 'being caught' but it was not the appellant's account that he had been detained merely that it was dark, he was told to stop but escaped.
   (iii) The judge did not consider it reasonably likely that the friend who was shot by the authorities would have disclosed the appellant's details to the authorities. The judge had failed to consider the CPIN which set out the ill treatment that is meted out by the Iranian authorities to anyone involved in political activities

3. In submissions, Mr Aziz reiterated his grounds and clarified that paragraph 10.1, 10.3 and 10.12 of CPIN detailed the approach of the Iranian authorities. He advanced that the Home Office CPIN at 10.1.1 identified the issue of detentions and forced confessions which had not been addressed by the judge.

4. There was no Rule 24 notice from the Secretary of State but Ms Rushforth submitted that the judge was entitled to take the view that he did and there was no material error of law.

Conclusion

5. In terms of the standard of proof we note that the appellant claimed asylum prior to July 2022.

6. We acknowledge (i) that the appellant did address the explanation in his witness statement of the reason he knew of the nature of the materials he claims he smuggled and with which the judge did not

engage and (ii) it is clear that the appellant was not caught or detained.

7. Moreover and fundamentally, in relation to (iii) the judge failed to address the CPIN on Kurds, namely the Country Policy and Information Note Iran: Kurds and Kurdish political groups dated May 2022 which at Section 14 (rather than 10, which relates to the previous CPIN) references the ill treatment of Kurds and specifically that the 'UN Secretary General's reports in 2019, 2020 and 2021 noted consistent reports of the use of torture to extract confessions'.

8. Nor did the judge address HB (Kurds) Iran CG [2018] UKUT 430 which identified that Kurds involved in Kurdish political groups or activity are at risk of arrest prolonged detention and physical abuse and even low-level political activity that is perceived to be political, such as the possession of leaflets supporting Kurdish rights, involves risk of persecution albeit each case depends on its facts.

9. The law is clear that an assessment of implausibility and credibility must take into account relevant background country material, as per Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 at §27:

> *"…A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question. That is, in effect, what Neuberger LJ was saying in the case of HK and I do not regard Chadwick LJ in the passage referred to as seeking to disagree."*

10. We conclude that, in the light of the identified and well documented 'hair trigger' responses of the Iranian authorities, it was incumbent on the judge to address these matters comprehensively and carefully reflect the narrative of the appellant. We conclude there is a material error of law.

11. Both parties agreed that the matter should be referred to the First-tier Tribunal should a material error of law be found.

12. The Judge erred materially for the reasons identified.

Notice of Decision

13. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made, the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCEA 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2nd December 2024