



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005163
First tier number: PA/63181/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 29th of January 2025

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE HILLS

Between

AF
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Sadeghi, Counsel, instructed by Vanguard Solicitors

For the respondent: Mr Tan, Senior Presenting Officer

Heard at Field House on 20 January 2025

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 is a male citizen of Iran, of Kurdish ethnicity. His appeal against a decision of the Secretary of State dated 17 November 2023 to refuse his claim for asylum was dismissed by a decision of First-tier Tribunal Judge Sweet (“the judge”) promulgated on 21 August 2024. The

appellant now appeals to the Upper Tribunal. The judge did not make an anonymity direction during the First-Tier Tribunal proceedings, however we make one now.

2. The appellant was unrepresented when he made his application for permission to appeal. The grounds advance two challenges, namely that the judge failed to consider his explanation regarding his hiding times in Shiraz; and that the judge needed to consider his sur place activities and public Facebook account.
3. In relation to his second ground, the appellant referred to *HB (Kurds) Iran CG [2018] UKUT 430 (IAC)* and argued that he would face a heightened risk on return to Iran because of his status as an asylum seeker, his Kurdish ethnicity and his political activity in Iran and the UK.
4. At the Upper Tribunal hearing, the appellant was represented by Mr Sadeghi. We discussed with the parties' representatives our preliminary view that the decision of the First Tier Tribunal appeared deficient. Mr Tan, for the Secretary of State, accepted that there were material errors of law in that decision.
5. Paragraphs 13-15 of the judge's decision reads:

[13] The burden of proof is on the appellant, and the lower standard of proof, namely a reasonable degree of likelihood, applies. I have not found the appellant's account to be credible due to the reasons set out in the refusal letter. He provided limited information about his activities in Iran, which appear to be limited to one demonstration in November 2019, and no problems while living at his sister's house until he returned to his family house two years later, in or about October 2021. I consider the length of time which has passed makes it extremely unlikely that the appellant would be of any interest to the Iranian authorities.

[14] He has engaged in limited activities in Iran and in the UK, attending few demonstrations due to financial reasons, and in any event he is a low-profile protester likely to be of no interest to the Iranian authorities. He relies on letters from Wesalhaq dated 6 February 2024 and the Rights of Sunni Muslims - Iran dated 10 February 2024 in support of his claim, but these are self-serving letters of limited or no evidential value.

[15] Taking into account all the appellant's activities, including his limited activities on Facebook and Telegram accounts, I do not consider that the appellant is at any risk on return, nor do I consider that his activities in Iran placed him in any danger. He failed to seek asylum in France, which goes to his credibility under Section 8 of the 2004 Act, and I dismiss his appeal. No claim was put forward under Article 8 ECHR.

6. In reaching his decision the judge does not appear to have considered *HB (Kurds)*, indeed the decision makes no reference to it at all. The appellant included a significant volume of material from his Facebook account within his bundle about his sur place activities and activities in Iran. The judge makes very limited reference to that evidence.

7. In *HB (Kurds)* [98] the Upper Tribunal held that Kurdish ethnicity is a risk factor which, when combined with other factors may create a real risk of persecution. Those other factors include even “low-level” political activity. The judge did not undertake an adequate assessment of the risk factors which apply to the appellant, in particular that he is a Kurd, would return to Iran as a failed asylum seeker, and that he appears to have engaged in political activity in Iran and the UK.
8. We agree with both representatives that the judge erred in his decision.

Disposal

9. The decision of the First-tier Tribunal is vitiated for the reasons outlined above. We set aside the decision of the First-tier Tribunal. We have considered whether to retain the case in the Upper Tribunal or remit it to the First-tier Tribunal and have concluded that remittal is appropriate because, not only was the risk assessment inadequate, but so too was the fact-finding exercise undertaken by the judge. We have considered whether any of the judge’s findings can be preserved however given the nature of the error of law we do not consider that possible.

Notice of Decision

The decision of the First-tier Tribunal is set aside as it involved an error of law. No findings are preserved.

Directions to the First-tier Tribunal

- 1. The appeal is remitted to the First-tier Tribunal (Hatton Cross);**
- 2. The remitted appeal shall not be conducted by First-tier Tribunal Judge Sweet;**
- 3. The remitted appeal shall be conducted in line with this error of law decision;**
- 4. The anonymity direction is maintained.**

N. Hills

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 27 January 2025