Upper Tribunal **Appeal number: PA/11641/2019 (V)**

(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reason Promulgated**
On 7 January 2021	**On 21 January 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

PA

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Ms L Mensah, instructed by Broudie Jackson & Canter Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. At the conclusion of the hearing I indicated that I found sufficient error of

law to set the decision aside but reserved my full reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is an Iranian national of Kurdish ethnicity with date of birth given as 1.7.88, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 3.3.20 (Judge Shergill), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 7.11.19, to refuse his claim for international protection on Convention grounds of imputed political opinion.

2. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions, the grounds of application for permission to appeal to the Upper Tribunal, and the oral submissions made at the remote hearing before me.

3. The First-tier Tribunal entirely disbelieved the appellant's claim of KDP or other political activity, rejecting at [20] of the decision that he has ever, past or present, been involved with KDP politics, whether as a sympathiser or support, or otherwise. At [21] the judge rejected the claim that he was ever wanted by the authorities and concluded that the claim had been entirely fabricated. Finding that he had no genuine political belief, at [22] to [26] of the decision the judge concluded that there was no risk arising from *sur place* activities, in particular Facebook postings, and that it was reasonable to expect him to delete the contents before returning to Iran and that he would not be obliged to disclose any such postings. In the premises, the protection appeal was dismissed. The appellant had not pursued any article 8 ECHR claim, so this was not addressed in the Tribunal's decision.

4. In summary, the grounds argue that the First-tier Tribunal's credibility findings were flawed. For example, it is submitted that the judge's concerns about the appellant's witness statement were not put to him or his legal representatives for comment. It is also argued that insufficient reasoning was provided for findings made, with reference made to specific aspects of the decision. It is asserted that the judge was selective in quoting background information; the appellant unfairly questioned for not mentioning the arrest warrant; and the *sur place* claim not properly considered.

5. Permission to appeal was refused by the First-tier Tribunal on 24.8.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Allen granted permission on all grounds, but did so without providing any reasons, other than to suggest that the grounds identified arguable points of challenge to the decision.

6. The Tribunal has received the respondent's Rule 24 reply, dated 1.10.20. In addition, the appellant's representatives have belatedly and in breach of the directions issued by the Upper Tribunal, only 3 days before the hearing, submitted a number of documents, including: country background information

that was not put before the First-tier Tribunal; a further witness statement of the appellant; and a letter asserting that the judge did not raise any concerns about the authorship of the appellant's witness statement at the appeal hearing. However, at this stage the issue is whether there is an error of law in the making of the decision and in the premises I am not prepared to consider material which was not before the First-tier Tribunal.

7. The first of 8 grounds, although listed sequentially with two ground 7s, complains that at [9] of the decision the judge found that the appellant's witness statement had effectively been drafted by his lawyer. It is asserted that this concern was not raised with the appellant or his representative at the hearing. I am not satisfied that the observation made at [9] of the decision was anything other than the judge finding it "curious" that the witness statement of an appellant who claims to be illiterate should contain "quasi-submissions", leading the judge to conclude that it had been "heavily influenced" by the representative. Whether that is true or not, and despite the representative's letter of 3.9.20 asserting that the witness statement is solely that of the appellant, nothing in fact turns on the observation. The essence of the challenged paragraph is to note the omission of detail of the circumstances of the appellant alleged detention and torture. Given the indication of my other findings in the appellant's favour, Ms Mensah did not pursue this ground any further. In the premises, I am satisfied that no error of law is disclosed.

8. Ground 2 asserts that the reasoning of the impugned decision is insufficient. However, some of the points made are either immaterial or suggest a misreading of the decision. For example, it is suggested that the judge was critical of the appellant for failing to specify what branch of the KDPI he belonged to, when there are no 'branches' but alternative names for the party. Contrary to this assertion, I am satisfied that this was merely an observation by the judge and nothing whatsoever turns on the issue. I will return to other aspects of this ground, below.

9. The complaint in ground 3 relates to [14] of the decision, where the judge was not satisfied as to why the appellant failed to mention in his Screening Interview of 28.8.19 his home being raided or an arrest warrant being issued. Relying on Q178 of the substantive interview, it is argued that the appellant was unaware of the existence of any arrest warrant, as he had left the country; "He could not reasonably have been expected to mention a document he does not know exists." However, reading his answer to Q177, it is clear that before that interview on 26.10.19, he was aware than an arrest warrant had been issued, having been informed by his maternal uncle. In fact, at Q171 he stated that when he was in Turkey his uncle told him that the authorities had raided the house and were looking for him, which is entirely consistent with Q177 where he was asked whether there was an arrest warrant out for him in Iran, to which he replied,

"Yes, my maternal uncle told me the authorities were looking for me and I will be arrested if I return." It follows that, on his own account, the appellant was aware before he arrived in the UK that the authorities had raided his home and that there was an arrest warrant out for him. Neither of those alleged facts were mentioned in the Screening Interview. In the premises, this ground of appeal cannot succeed. To her credit, in her submissions, Ms Mensah accepted that having given further consideration to this ground, it is not made out. It follows that the judge was entitled to take at least some account of the failure to mention these claims in the Screening Interview.

10. In summary, the grounds in several respects either overstate the reliance of the judge on matters mentioned as material to the decision, or read into it criticisms of the appellant that were not in fact made.

11. However, I accept the criticism that in finding the appellant's account of treatment in detention not credible, at [10] of the decision the judge unfairly states that the appellant was "simply released having been told not to do that again." At Q83, the appellant had explained that, after being detained, he and others were beaten, kicked and hurt, stating also that they were "beaten heavily."

12. Further, my reading of the decision as a whole does give cause for concern that several of the adverse credibility findings are not adequately reasoned. For example, at [11] and [12] of the decision the judge stated that the appellant's accounts did not have the "ring of truth" about them and that "in his interviews he betrays what I consider to be the truth to his situation, that he can actually read." However, there is minimal, if any, supporting reasoning for these conclusions. The judge does not explain what in particular in the interview led to this conclusion. Another example is that other elements of the appellant's case are sceptically described as "nothing short of a miracle" or "miraculous" without making clear whether the judge means 'incredible' and, if so, providing adequate reasoning to justify the adverse conclusions reached. In his submissions, Mr McVeety very fairly accepted that on this general ground the decision is difficult to defend.

13. By way of further example, at [14] of the decision, the judge stated, "I found the latter part of the AIR to show further incredible answers being put forward by the appellant in response to increasingly challenging questions." However, the judge gave no examples of such "incredible answers". I am satisfied that there is force in [4] of the grounds which complains that "any reader checking the end of the interview would be left failing to understand the judge's reasoning."

14. Similarly, at [15] of the decision the judge states that there were aspects of the appellant's evidence that had shifted when discussing overheard conversations, giving a different account in interview to that in his witness statement. "There was also a shift in focus relating to carrying on with the bus journey when he

received the call about S's arrest." The judge gave no specifics or example from the interview to support these findings. At [17] the judge was not satisfied that the appellant had given a credible account as to why he suddenly found political interest and states that his lack of interest was self-evident in the interview. Again, the conclusion is stated with no example from the interview or other reasoning provided to support the conclusion.

15. Ms Mensah also drew my attention to part of [16] of the decision, in which she submitted the judge appeared to have required the appellant to obtain verification of his account from the KDP's head office. It is not clear to me that is what the judge actually intended to covey but I agree that based on the January 2019 CPIN at 6.4.1, letters of recommendation are restricted to verification of membership and not the factual claims of events or involvement of other persons; which would not be provided, for obvious reasons.

16. In relation to the general principle requiring adequate reasoning to justify findings, the grounds rely on MK (duty to give reasons) pakistan [2013] UKUT 00641 (IAC), where it was held to be axiomatic that a determination disclose clearly the reasons for a tribunal's decision. "A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons." Similarly, In R (Iran) and others v SSHD [2005] EWCA Civ 982, Lord Justice Brook held that there was no duty on a judge in giving reasons to deal with every argument and that it was sufficient if what was said demonstrated to the parties the basis on which the judge had acted. This approach was adopted and applied by the Upper Tribunal in Budhathoki (Reasons for decision) [2014] UKUT 00341.

17. In summary, having read and re-read the decision of the First-tier Tribunal with care, I am concerned that it is difficult if not impossible to discern cogent reasoning for a number of the adverse credibility findings made. It may be that these findings and conclusions would have be sustainable, provided adequate reasoning had been provided. However, as drafted, I am satisfied that the decision discloses clear errors of law by want of adequate reasoning, errors that cannot be overlooked.

18. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

19. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge identified above vitiate all findings of fact

and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

20. In all the circumstances, at the invitation and consent of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2.

Decision

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside and remitted to the First-tier Tribunal at Manchester to be remade afresh with no preserved findings.

I make no order for costs.

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 7 January 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings.*"

Signed: DMW Pickup

Upper Tribunal Judge Pickup

Date: 7 January 2021