**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006450

First-tier Tribunal No:
PA/50713/2020; IA/00920/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 22 May 2023**

**Before**
**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**M D**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr M Behbahani, Solicitor, Behbahani and Co
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

**Heard at Field House on 21 April 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant and/or any member of his family is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the Appellant or his family members, likely to lead members of the public to identify the Appellant and/or other member of his family. Failure to comply with this order could amount to a contempt of court**.

**DECISION AND REASONS**

**BACKGROUND**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Cohen dated 13 June 2022 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 6 July 2020, refusing his protection and human rights claims.

2. The Appellant is an Iranian national of Kurdish ethnicity. He came to the UK in February 2019 and claimed asylum on arrival. He claims to be at risk because of his political involvement with the PAK in Iran. His brother who is also in the UK having been recognised as a refugee was also involved with the PAK. He is the UK's representative for that party in the UK. The Appellant says that he promoted the PAK by distributing propaganda and leaflets. The Appellant claims to have come to the attention of the Iranian authorities for his political activities. He says that he was arrested and detained in 2011 or 2012. Following an incident in August 2018, when he was seen by the police writing PAK slogans on a wall, he fled Iran and travelled via Turkey, Serbia, Bosnia and France to the UK.

3. The Respondent did not accept the Appellant's claim as credible due to inconsistencies in his account. The Respondent did not accept that the Appellant would be at risk on return to Iran, as an Iranian male who had not previously come to the attention of the authorities. She therefore rejected his protection claim. The Appellant's claimed mental health problems were not accepted to be sufficiently severe to breach his human rights on return. The Respondent did not accept that the Appellant has a family life in the UK and did not accept that removal to Iran would breach his human rights.

4. The Judge also found the Appellant's claim to lack credibility in large part due to inconsistencies in his account. The Judge found the evidence of the Appellant's brother to lack impartiality and gave that no weight. Having considered also the documentary evidence and the background evidence, the Judge found that the Appellant would not be at risk on return. He also concluded that removal would not breach the Appellant's human rights. The Decision was dated some ten months after the hearing.

5. The Appellant appeals on four grounds as follows:
   Ground 1: the Judge's conduct of the appeal.
   Ground 2: the Judge made material errors of fact and failed to give the appeal "anxious scrutiny".
   Ground 3: the Judge failed properly to take into account relevant considerations and the Appellant's "rebuttals".
   Ground 4: the Judge failed to provide adequate reasons for his decision.

6. Permission to appeal was granted by First-tier Tribunal Judge Barker on 14 July 2022 in the following terms so far as relevant:

> "..2. The grounds disclose arguable errors of law in the First-tier Tribunal Judge's decision.
> 3. It is arguable that the Judge made a number of factual errors in setting out the evidence under consideration which imply a failure to apply anxious scrutiny and make a proper assessment of the evidence.
> 4. It is arguable that the Judge failed to provide adequate reasons for his decision, as set out in the grounds submitted in support of the application.
> 5. It is arguable that the unexplained delay of some ten months between the hearing and decision led to any factual errors, and further implies a failure to assess the appeal carefully and comprehensively.
> 6. Permission to appeal is granted on all grounds."

7. The Respondent filed a Rule 24 reply dated 22 August 2022 seeking to uphold the Decision. She accepted that there had been a delay between the hearing and promulgation of the Decision. However, she directed the Tribunal's attention to the case of Secretary of State for the Home Department v RK (Algeria) [2007] EWCA Civ 868 and contended that a nexus is required between the delay and the safety of the Decision for this to amount to an error of law. She did not accept that such a nexus exists here.

8. The matter comes before me to decide whether the Decision does contain an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.

9. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle ([AB/xx]) and Respondent's bundle ([RB/xx]) before the First-tier Tribunal together with the Appellant's skeleton argument before the First-tier Tribunal.

10. Having heard submissions from Mr Behbahani and Ms Nolan, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

## DISCUSSION

11. I deal with the grounds in the order they are pleaded, taking into account the submissions made orally by both representatives.

### Ground 1: Concerns relating to Judge's conduct of the appeal

12. Although Mr Behbahani did not seek to suggest that he relied upon the Judge's presentation at the appeal hearing, it is pointed out in the grounds that the Judge appeared remotely not wearing a jacket and tie. Whilst such informality is not to be encouraged, that cannot of itself give rise to an error of law. Mr Behbahani suggested however that this was indicative of the Judge's lack of care when dealing with the appeal and added to the Appellant's sense that his appeal had not been given the requisite scrutiny. I bear this in mind when dealing with the remainder of

this ground and the other grounds, particularly in relation to what is said to be a lack of care on the part of the Judge.

13. Dealing first with the delay in issuing the Decision, as Mr Behbahani pointed out, that delay is unexplained. Of course, the fact that the Decision is dated in June 2022 does not mean that the Judge wrote it only on that date. He may have started to write it sooner. We do not however know whether that was the case as the Judge fails to mention or explain the delay.

14. As the Respondent points out, however, the delay cannot of itself amount to an error of law unless it can be shown to have had an impact on, for example, the Judge's recall of what occurred at the hearing, the facts of the case or the evidence. As the Court of Appeal put it in R (oao SS (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1391 "excessive delay is not itself a reason for setting the decision aside. The correct approach is to ask whether the delay has caused the decision to be unsafe so that it would be unjust to let it stand". As the Court went on to say, in an asylum case, this Tribunal "should examine the FTT judge's factual findings with particular care to ensure that the delay has not caused injustice to the appellant". I confirm that this is the approach which I have adopted when looking at the remaining grounds.

15. Of itself, though, neither the delay nor the Judge's appearance at the remote hearing of this appeal can constitute an error or unfairness in and of themselves.

**Ground 2: Material mistakes of fact and/or typing errors as further indication of the Judge's failure to subject the Appellant's appeal to anxious scrutiny.**

16. This ground is pleaded as eight individual bullet points. It is however appropriate to take some together rather than in strict order.

17. The reference to "Iranian code" at [5] of the Decision is self-evidently a typographical error for "Iranian Kurd" and probably arises from the Decision having been dictated and not thoroughly checked. Whilst that is a regrettable error, it does not disclose a lack of scrutiny nor does the error show that the Judge misunderstood the Appellant's case. Read in context, it is clear what was there meant (even though the pleaded ground suggests it is not).

18. Similarly, at [14] of the Decision the Judge refers to the Appellant indicating that he had felt under "significant pressure in interview and did not feel that the interrupter [sic] was correctly translating his answers". As the author of the grounds acknowledges, it is evident that the Judge is here referring to "interpreter" not "interrupter" and that this is therefore a typographical or dictation error. It does not affect the sense of this

paragraph, nor does it show that the Judge failed to understand the Appellant's case. It is however relevant to my consideration of the Decision for two reasons. First, relating to the Judge's recall of the hearing, it shows that the Judge did remember what was said as this is a fairly minor point which has limited relevance to his findings. Second, it is relevant as providing an example of what the Judge terms a "recurring theme" in relation to the Appellant's complaint about interpretation errors which arises under the Appellant's ground four and with which I deal below.

19. The Judge refers at [13] and [15] of the Decision to the Appellant and his brother having given evidence via a Kurdish language interpreter. In fact, they gave evidence via a Farsi interpreter. I accept that in some cases the language which an interpreter speaks may have relevance where it is said that an Appellant is unable to understand the interpreter or where the Appellant's language may have a bearing on nationality or ethnicity.

20. Dealing with that latter point first, that is not this case. The Appellant is accepted to be of Kurdish ethnicity and in any event, he was giving evidence via a Farsi interpreter not a Kurdish one. If he had been disbelieved as being Kurdish and the Judge had referred to the Appellant giving evidence via a Farsi interpreter where the interpreter was in fact a Kurdish one, that might have a bearing, but that does not arise in this case.

21. In relation to the former point, although the Appellant has complained of difficulties with interpretation in this case, he did not do so at the appeal and in any event the interpreters used in his case have all been Farsi speakers. Any difficulties of interpretation do not therefore arise from the language spoken by the interpreter. I do not therefore accept that this error of fact discloses any error of law in the Judge's consideration or determination of the appeal.

22. Whilst the foregoing minor errors are regrettable, I do not accept that they disclose any errors of law. Nor do they show that the Judge did not apply the requisite scrutiny. Those errors are all minor. Even taken cumulatively, they do not show that the Judge was not taking appropriate care. They do not show either that the Judge had forgotten what occurred at the hearing.

23. The Appellant then turns to errors of fact said to have been made by the Judge when considering the substance of the Appellant's case and the evidence and reaching his findings.

24. Since the Judge's overall conclusion was that the Appellant is not a credible witness, I accept that errors made in this regard are potentially more serious and capable of infecting the Decision as a whole if they are made out. That would be so in particular if it could be shown that the

Judge had wrongly recorded or misunderstood the evidence as a result of the delay in writing the Decision.

25. I begin with the complaint made about [27] of the Decision which reads as follows:

> "The appellant initially in his interview stated that he distributed leaflets and wrote slogans and messages on walls and doors in order to get the parties policies across. However, later in interview the appellant indicated that he did not distribute leaflets. I find this to be a further discrepancy in the appellant's evidence."

26. The Judge is there dealing with the substance of the asylum interview and not what was said at the hearing. If he had misunderstood that evidence, however, that might indicate a lack of scrutiny of the evidence as the Appellant asserts.

27. However, I am not satisfied that the Judge did make any error. The following is the relevant passage from the Appellant's asylum interview at [RB/49]:

> "**116. Question** …
> Other than advertising the party verbally, did you advertise the party using any other means.
> **116. Response**
> Yes. In writing also. We used to do that.
> **117. Question** …
> Can you tell me more about this.
> **117. Response**
> In places during the night time, we would distribute leaflets. Or we used to write things on doors and walls.
> **118. Question**…
> Who did you do this with?
> **118. Response**
> Mostly, I did it by myself.
> **119. Question**…
> And when you were not by yourself, who would you do this with?
> **119. Response**
> I use to only do this by myself."
> [underlining my emphasis]

28. The Appellant went on to explain that he used to write the leaflets himself, mainly for the purposes of education, and distribute them in official places like nurseries and schools ([RB/50-51]). When asked whether he would include anything about the PAK, he said, at question [128] that sometimes he would write "stay alive".

29. However, at question [130] when asked where he would distribute the leaflets and having replied "night time", he was asked at question [131] "[w]here in particular would you distribute the leaflets about the PAK party". He responded, "[t]hey were not like distribution. They were writings on the wall". It was subsequently pointed out to the Appellant

that in his statement prior to the interview (dated August 2019 – at [RB/22-24]) the Appellant had not mentioned either distributing leaflets or writing on walls.

30. When I drew Mr Behbahani's attention to this exchange and asked why the Judge was not entitled to record that in interview the Appellant had said that he distributed leaflets but then said that he had not, Mr Behbahani said that this ignored the subsequent statements made by the Appellant in which he had "clarified" his evidence.

31. The Appellant's statement following the interview and the Respondent's decision is dated 28 October 2020 and appears at [AB/1-10]. The issues raised therein are referenced to the paragraphs of the Respondent's decision letter. The discrepancy relied upon by the Judge at [27] of the Decision appears at [43] of the Respondent's decision. Although the Appellant seeks to explain at [19] of his statement the lack of reference to any detail of his activities in his earlier statement (blamed on his previous representatives), he says only that the Respondent's suggestion that "simply because [he has] provided further details and those details were not contained in [his] initial statement and therefore they are internally inconsistent, is unfair and unreasonable." That fails to explain away the inconsistency in his answers within the interview itself. A Judge is self-evidently entitled, absent reasonable explanation, to rely on such inconsistencies as giving rise to credibility concerns.

32. The next mistake of fact is said to appear at [28] of the Decision where the Judge says this:

> "The appellant was questioned concerning the slogans that he would write upon the wall and responded that he would write 'Long Live Kurdistan'. I find again the appellant's response to be of the most simplistic in nature and find that if he had been a member or even a supporter of the party for nine years that he would have been providing far more detailed responses when asked about the nature of his activities in interview. I find the limited and basic responses that he provided indicated that he has sought to bolster his account throughout".

33. The complaint made as pleaded is that the Appellant had never said "Long Live Kurdistan" in interview. There are two difficulties with that assertion. First, at [AB/22] appears a letter dated 12 December 2019 from the Appellant's previous solicitors following the asylum interview where the Appellant is said to have complained that his answer to a question was interpreted as "stay alive Kurdistan" but should have been "Long Live Kurdistan". Mr Behbahani said that there were errors made by the Appellant's previous solicitors, but I cannot accept that the solicitors would have written this letter without instruction. Further, and more importantly, the importance of those words is emphasised by the Appellant himself at [19] of his statement in October 2020 (and therefore after the solicitor's letter) ([AB/7]). There is no error made by the Judge. Indeed, the error appears to have been made by the author of the grounds in the assertion that the Appellant did not say this.

34. The next complaint relates to [30] of the Decision where the Judge deals with the incident said to have occurred in August 2018 and which is said to have triggered the Appellant's departure from Iran. The Judge deals with this as follows:

> "The appellant claimed that the last incident which occurred to him prior to him leaving Iran was that one night he was writing slogans on the wall and saw a police car passing. They ordered him to stop but he ran away. However, the appellant later claimed that he was not approached by the police (Q227-228). I find this to be a further significant discrepancy in the appellant's evidence and further damaging to his credibility".

35. The relevant extract from the asylum interview is at [RB/68] and reads as follows:

> "**227. Question**…
> What made you want to leave Iran in the end?
> **227. Response**…
> The last time before my travel, the atmosphere for me was very closed. I faced abuse. I continued my activities. I advertised more. At night time I advertised in [I]. I was writing on the walls. I saw a car passing by me after a short while and I really felt that I was in danger. I saw a police car pass.
> **228. Question** …
> Were you approached by the police?
> **228. Response**…
> No. I saw the police and they became suspicious. They ordered me to stop but I ran away."

36. The Judge's recording of what is there said is not incorrect. It may be stretching a point to say that the discrepancy between not being approached and being ordered to stop is not a particularly significant one and may be reconcilable, but it was for the Judge to assess the evidence. I am concerned with whether the Judge made a mistake of fact. He did not. I cannot accept Mr Behbahani's submission that there is in fact no inconsistency.

37. The final mistake of fact said to have been made was one on which Mr Behbahani placed some emphasis in his submissions. His submissions in this regard were not particularly easy to follow. In fact, it took three attempts for me to understand what the complaint was at all. The relevant part of the Decision is at [34] as follows:

> "I further note that the appellant has submitted a letter from the PAK in support of his claim. However, the letter is brief and vague in nature. It does not detail the appellant's claimed activities. The writer of the letter despite being present in the UK did not attend court in order to give evidence in support of the appellant's claim. In considering this evidence I apply **Tanveer Ahmed** and in light of my adverse credibility findings above, attach little weight thereto."

38. The letter in question appears at [AB/21] and is indexed as "Letter of confirmation from Kurdistan Freedom Party (PAK) signed and dated 27th

October 2020". Although the details of the author of the letter is partially covered by a stamp and therefore difficult to read, it appears to be written by a "J Amir" who is said to be the "European representative" of the PAK. It is addressed "[t]o whom it may concern". At the bottom of the letter are details of the Appellant's brother who is said to be the UK representative of the party. After some explanation from Mr Behbahani, I was able to understand that this shows that the letter was addressed to the Appellant's brother whose details (in the UK) therefore appear on the letter and was not written by him. This may have led the Judge to understand that the writer of the letter was present in the UK (as did I initially).

39. The letter does not in fact show where the writer of the letter is resident although I accept that it does provide in the footer a website, email address and mobile number which appear to be in the EU rather than UK. Although the Appellant's brother mentions the letter in his statement ([AB/12]), he says only that "[the Appellant] has obtained a letter of confirmation from our political party" confirming the Appellant's brother's status and that he (the Appellant's brother) is the UK representative of the PAK (although it does not in fact say this: see below). He does not say that he obtained the letter still less where the author of the letter lives or that it came from someone living outside the UK as Mr Behbahani told me was the position.

40. As regards the substance of the letter, it reads as follows:

> "This is a letter from Kurdistan Freedom Party (PAK) to confirm that [MD] has been a member of the Political party since 2011 and he has been actively involved since. [M D] was referred to PAK by his brother [F B] who is also a member of PAK.
> Due to the nature of his involvement with the PAK political party, [M D] had to had to [sic] flee his own country and seek asylum in foreign countries, he cannot return to Iran and is seeking refuge to live in the UK legally.
> Kurdistan freedom party (PAK) would like to respectively request that you accept him as a political asylum [sic]. Your cooperation in this matter is much appreciated.
> …"

41. Aside the misunderstanding as to the place of residence of the author of this letter, as Ms Nolan pointed out, the Judge was entitled to say as he did. As a matter of fact, the author of the letter did not give oral evidence and the evidence was not therefore tested. The Appellant's brother relies on the letter in his statement as evidence of his own position rather than as corroboration of the Appellant's claim although, as I point out above, the substance of the letter says that he is himself a member rather than the UK representative. The Appellant says only that the letter is intended to confirm his affiliation with the party. He does not say how the author of the letter would know what is stated in the letter.

42. Moreover, as Ms Nolan pointed out, the description of the substance of this letter as "brief and vague in nature" is a finding which the Judge

was entitled to make. The letter refers to the Appellant's membership of the party since 2011 but provides no details of his active involvement even though it is said to be by reason of that involvement that the Appellant had to flee Iran. The Judge was entitled not to place weight on the letter based on its content and that the writer of the letter does not explain how he knows what he purports to give evidence about.

43. The Appellant has failed to show that the Judge made mistakes of fact when considering his case. Although there are minor typographical errors (which are few in number), taken singly or cumulatively those do not disclose a failure to give appropriate care to the scrutiny of the Appellant's case.

**Ground 3: Failure to properly consider all considerations and rebuttals presented by the Appellant in support of his appeal**

44. It is suggested that the Judge did not consider what the Appellant said in rebuttal of the Respondent's adverse credibility allegations. In his oral submissions, Mr Behbahani said that the Judge had failed to consider the Appellant's witness statement of October 2020 and the skeleton argument submitted on his behalf. He asserted in particular that the Judge had failed to mention the skeleton argument.

45. Failure expressly to mention a skeleton argument can scarcely be referred to as an error of law, particularly since a skeleton argument should be just that – a summary of the arguments which are to be made at the hearing and cross-reference to the evidence and the law. It is not itself part of the evidence.

46. I turn then to the Appellant's witness statement. The Judge refers to that statement expressly at [11] of the Decision. I accept that, on the face of that statement, the Appellant has taken issue with the points put forward by the Respondent. However, when one reads that statement, it is mainly a disagreement with the Respondent's reasoning and conclusions. It lays blame on previous representatives and interpreters for what are said to be errors of interpretation or failures properly to present his case but in terms of explanation and detail of his case, the Appellant's witness statement fails to advance matters. In many instances, it simply reiterates what the Appellant had said in interview. As the Judge also points out at [29] of the Decision in relation to "substantial core discrepancies" when discrepancies have been put to the Appellant "he has subsequently attempted to change his evidence and make excuses in order to cover up significant discrepancies". The Judge was therefore entitled not to give weight to those changes in evidence.

47. Contrary to what is asserted at [7] of the grounds, the Judge has set out "the factors and evidence that [the Appellant] has presented". That he has done so by reference often to the answers given in interview or in

some instances the earlier witness statement from which the Appellant has sought to resile does not mean that the Judge has failed to consider the Appellant's case. The Appellant does not point to any element of his case which the Judge has overlooked or failed to deal with.

48. The submissions made at [6] and [7] of the grounds are general. The only specific instance relied upon relates to [32] of the Decision where the Judge says this:

> "Despite the appellant claiming that the authorities had previously detained him and that he was caught in the act of writing political slogans on the wall and the authorities sought him and made enquiries regarding his whereabouts with his brother, states that he was able to leave the country through the airport to the multiple security channels utilising his own passport without encountering any problems whatsoever. The layers of security at the airport in Teheran are widely reported in the objective evidence. I find the fact that the appellant was able to leave the airport in this manner, despite claiming to be wanted by the authorities to be incredible and contrary to the objective evidence and indicative of the fact that the appellant had no political profile whatsoever in Iran and was of no interest to the authorities at the time they left the country and would equally be of no interest upon return now."

49. In the ground as pleaded, it is said that in the skeleton argument and oral submissions, the Judge was referred to the background material and the facts of the Appellant's case. It is asserted that there is no evidence that "those with historical or familial adverse persecutory problems with the Iranian authorities are subjected to any form of permanent exit ban or are likely to face problems trying to leave the country". It is pointed out that the Appellant does not say that he was the subject of an arrest warrant or exit ban when he left (although see below the Appellant's evidence about an arrest and imprisonment said to have taken place in 2011 or 2012).

50. Although Ms Nolan accepted that the Appellant did not say he faced an exit ban, she did point out that his case is that he had been detained in the past. She submitted that it was not plausible in those circumstances that if he were of interest to the authorities as he claimed, he would be allowed to leave.

51. Ms Nolan drew my attention to the part of the Appellant's skeleton argument which refers to this issue and [AB/47] to which this makes reference. That is part of the Respondent's own Country Policy and Information Note entitled "Iran: Illegal Exit" dated February 2019 ("the CPIN"). As Ms Nolan pointed out, the CPIN does not in fact say what the grounds or skeleton argument suggest it does. It indicates that an exit permit is required in some circumstances (although I accept that those do not appear to apply to the Appellant's situation). There is however also reference at [5.3.5] of the CPIN to the presence of security organisations at the airport and to the authorities "regularly" imposing travel bans on certain individuals without their knowledge.

52. Whilst I accept that the background evidence about the ability of individuals of interest to the authorities being able to leave Iran is somewhat inconclusive, it certainly does not indicate that someone of interest would never face problems, particularly since, as the Judge pointed out, there is a security organisation presence at the airport. As Ms Nolan submitted, it was open to the Judge to find it implausible that the Appellant would be able to leave without interest being shown.

53. The Appellant has failed to show that the Judge did not properly consider his evidence. The Judge was not required to go through the Appellant's statement with a fine toothcomb setting out what was or was not accepted. The Judge was entitled not to accept what he referred to as the Appellant's subsequent attempts "to change his evidence" ([29]).

**Ground 4: Failure to give proper reasons.**

54. This ground focusses on what are said to be "key indicators" of the Judge's failure to give reasons. I address each in turn.

55. At [22] of the Decision, the Judge says this:

> "The appellant only claims to be a supporter of the group. He was asked in interview concerning the group's aims and objectives and his responses were very simplistic in nature."

56. The Appellant says that the Judge has failed to give reasons why he finds the answers to be "very simplistic". However, that is the Judge's reason. The submission is that the Judge should give reasons for his reason.

57. If and insofar as the complaint is that the Judge has failed to give examples to illustrate his reason, that is also unsustainable. I have set out at [32] above [28] of the Decision, and what the Judge says about the slogans which the Appellant said he wrote on the walls. The Judge describes the Appellant's evidence about that as "simplistic". He also there says that the Appellant failed to provide detail about his activities.

58. At [25] of the Decision, the Judge refers to the Appellant being "unable to provide any detail in respect of the joining process" for membership of the PAK. The Judge there goes on to say that when the Appellant was asked to explain the aims of the party during the interview, "his response was of the most basic and simplistic nature". The Judge cross-refers to question 100 of the interview record. In fact, the point is better made by reference to that answer in context at questions 98-100 as follows ([RB/46]):

> "**98 Question** …
> Can you tell me about any other aims for [sic] party has?
> **98 Response** …

> Their main aim is the freedom of Kurdistan. The freedom of the areas Kurds live. And to also reach for Human Rights for them.
> **99 Question** …
> Do they have any other aims?
> **99 Response**…
> No. As far as I know, no. For example like what?
> **100 Question**…
> It was just an open question for you to answer.
> **100 Response**
> OK. Thank you. I do not have any particular information about their aims."

59. The Judge was entitled to describe those responses as "basic and simplistic". He was entitled to draw on that and the other examples I have set out above to make the general point he did at [22] of the Decision. He has provided adequate reasons for that finding.

60. At [24] of the Decision when referring to a discrepancy between the Appellant's witness statement and interview as to his brother's role within the PAK which is blamed on interpretation, the Judge observes that the Appellant's reliance on interpreter error "is a recurring theme". As he goes on to point out, the Appellant was asked in interview whether he was content that his earlier witness statement was accurate, and he confirmed that it was.

61. Complaint is made in the grounds that the Judge has failed to give adequate reasons for his observation that discrepancies based on interpretation errors are "a recurring theme". Again, this is, in reality, a complaint that the Judge has not given reasons for his reason.

62. Again, insofar as it is a complaint that the Judge has failed to provide illustrations to give that as a reason, I have counted at least four instances in the Appellant's October 2020 statement where he claims that problems have arisen with his account due to interpreter error or failure properly to understand his responses. More are set out in the letter from his former representatives to which I refer at [33] above. Whilst I accept that the Judge has not made references to all those instances, he does refer at [14] of the Decision to the Appellant having given evidence that he did not feel that the interpreter was correctly translating his answers at interview.

63. As a matter of fact, it is a "recurring theme" that the Appellant blames interpretation error for discrepancies. The Judge did not need to provide reasons for that finding which was clearly open to him on the evidence.

64. At [26] of the Decision, the Judge says this:

> "The appellant indicated that he distributed information and leaflets amongst fellow students. In interview he was asked where this information and documentation came from and was unable to provide a credible

response (Q89-90). I find this to be indicative of the fact that the appellant has again sought to bolster his evidence."

65. This is not an illustration of a failure to provide reasons. The Judge has provided a reason why he does not accept the Appellant's case on this issue by reference to answers given at interview.

66. The Appellant contends that the answers given to questions 89-90 are in fact "detailed and credible responses". However, when asked from whom he had obtained the information, he said simply that it was "from the party" and when asked where exactly it had come from, he simply said that it was "from his studies" and "communication from [his] brother". The Judge was entitled to find those answers not to be a credible response. They are most certainly not detailed.

67. At [29] of the Decision, and as I have referred to at [46] above, the Judge considered the Appellant's evidence in relation to the historic problems which the Appellant claimed had occurred from 2011 or 2012 when he claims to have been arrested and imprisoned. The Judge there sets out the evidence given in interview and the discrepancies which emerged.

68. I do not set the questions and answers out in full, but the questioning at interview runs from question 152 ([RB/55]) to question 200 ([RB/63]). The Appellant first said he was taken in for questioning, then that he was detained first in 2011, then that he was detained about twenty times, that he was in the detention centre for 17-18 hours, then 14-15 hours, then that he was imprisoned for one hour and fingerprinted, then that there was a warrant when his house was raided, then that he was in fact imprisoned for three months following a court sentence.

69. I observe that Mr Behbahani said in submissions when dealing with exit from Iran that the Appellant had not been the subject of court process or imprisonment which is itself inconsistent although I accept that the Appellant says that the offence of which he was convicted was for having a satellite dish and was unconnected with the PAK activity (which is of course itself notable). Further, as the Respondent points out in her decision letter, the Appellant only mentioned being detained on one occasion.

70. The Judge drew attention to those discrepancies at [29] of the Decision and made the observation that the Appellant had only changed his evidence in that regard once the "significant discrepancies" were put to him. The Judge found that the discrepancies "go to the very core of the appellant's claim" and were "extremely damaging to his credibility".

71. The complaint made in the pleaded grounds is that the Judge failed to give adequate reasons for rejecting the Appellant's explanation in his witness statement for these discrepancies.

72. The Respondent raised these discrepancies at [44] of the refusal letter. The Appellant responds to that part of the letter at [20] and [21] of his statement ([AB/7-8]). He refers to his "attempts to explain the sequence of events" relating to his arrest, interrogation, detention and imprisonment. He appears to accept that those attempts disclose some confusion (although the second sentence of [20] is incomplete and does not say what it is that the Appellant accepts, the following sentence begins with the words "[t]he confusion"). Once again, the Appellant seeks to blame the interpreters even though he indicated at interview that he had understood the interpreter and there is no indication in the interview record that there was any misunderstanding. He denies that there is any inconsistency whereas there patently is. He says that he would like to take the opportunity to explain the sequence to the Judge but it is plain from the Decision that any further explanation given orally (if it was) did not convince the Judge.

73. The sequence set out at [21] of the statement is itself inconsistent with the interview record. The Appellant says that he was detained overnight before being taken before a Judge. In interview he said that he was kept overnight in one place and then kept in the detention centre for 17-18 days or alternatively 14-15 days (questions 183-187). He first said that he was in prison for one hour where he was fingerprinted (question 188). Even if question 191 suggests that the court intervened after the first night, he says only that the Judge ordered that he be detained temporarily. That answer in any event appears to suggest that this happened after he had been put in prison for one hour and fingerprinted rather than before that happened (contrary to the statement). The Appellant's statement offers no explanation for the previous discrepancies. The only explanation is said to be interpreter difficulties which explanation the Judge had rejected at [24] of the Decision.

74. Mr Behbahani appeared to suggest that the Appellant could not be found not to be credible if he had offered an explanation for earlier discrepancies. That is obviously not the position. Just because an appellant seeks to explain earlier inconsistencies by means of a later account does not mean that the later account is to be believed and the earlier inconsistencies discounted. In fact, quite the opposite is the case unless there is a reasonable explanation for the earlier discrepancies. The Judge was entitled not to accept that to be the case here.

75. The Judge did not have to set out in detail what it was that led him to reject this part of the Appellant's account. He clearly took into account the Appellant's statement and was entitled to reject it on the basis that the Appellant had changed his case (again) only once his attention was drawn to the discrepancies.

76. The Judge also heard evidence from the Appellant's brother. That is dealt with at [33] of the Decision as follows:

> "I note that the appellant's brother has attempted to support his claim. However, I find that he has a vested interest and is not an impartial witness in his brother's case and find that the appellant has merely attempted to attach a fabricated asylum claim on the coattails of his brother's successful asylum application. In the circumstances I attach no weight to the self-serving evidence of the appellant's brother. I note that the appellant's brother was granted asylum directly by the Home Office and therefore that his evidence was not tested."

77. Mr Behbahani submitted that the Judge's reasoning ignores that the Appellant's brother is also the UK representative of the PAK and, in effect, that his evidence should have been given more weight on that basis and/or that the Judge needed to give more reasons for rejecting it.

78. The witness statement of the Appellant's brother is however concerned with the Appellant's connection with him as his brother not as the UK representative of the PAK. He seeks to corroborate the Appellant's account of being under surveillance by the Iranian authorities because of that familial connection and not because of the Appellant's direct involvement with the PAK (to which the position held by the Appellant's brother might have been relevant). It is worthy of note that the reliance placed by the Appellant's brother on his position at [5] of the statement ([AB/12]) is only that the Appellant had obtained a letter from the PAK confirming the Appellant's brother's own position. As noted at [38] above, that was from the European representative of the party and not from the Appellant's brother as UK representative.

79. The Judge was entitled not to give weight to the Appellant's brother's statement. He has provided reasons for not giving it weight. Again, the submission is that the Judge should have given reasons for his reasons.

80. Turning finally to [37] of the Decision, the Judge said that he "had regard to Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004". The Appellant says that this ignores the reasons given by the Appellant for not claiming asylum in Turkey, Serbia, Bosnia and France. The Respondent relied in particular on the Appellant's failure to claim asylum in France, but appears to accept that if the Appellant was under the control of an agent, that was a reasonable explanation for not claiming asylum. I accept that the Judge should not have placed any weight on that failure in the circumstances. However, the reason given at [36] of the Decision for rejecting the Appellant's credibility is just one of the very many reasons for finding the Appellant's claim to be fabricated. As such, that error is not material.

81. The Appellant has failed to show that the Judge did not give adequate reasons for his findings. In relation to the error which I accept to have been made at [36] and [37] of the Decision, that is not material when considered in the context of the Judge's findings in relation to the core substance of the Appellant's claim which he was entitled on the evidence to find not credible. As Ms Nolan pointed out in her submissions, the

Appellant has sought to cherry-pick parts of the reasoning rather than reading the Decision as a whole. Read as a whole, there is no material error of law made by the Judge in his findings on the core claim.

## CONCLUSION

82. With the exception of the finding in relation to the Appellant's failure to claim asylum en route to the UK and for the reasons set out above, I am satisfied that the Judge has not erred in law in reaching his conclusion that the claim is not credible. As I explain above, the error of placing reliance on the Appellant's failure to claim asylum earlier cannot be material when assessed against the remainder of the reasons which concern the substance of the claim.

83. I return to where I started in relation to the delay in the issuing of the Decision. For the reasons set out above, I do not accept that the Judge has made errors of fact when considering the evidence. He has considered all relevant evidence and made findings which were open to him on that evidence for what are adequate reasons. As such, the grounds do not satisfy me that the Decision is unsafe by reason of the delay in issuing it. The Appellant has failed to show that the Judge did not give his case "anxious scrutiny".

84. The Appellant has not demonstrated that there is a material error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

## NOTICE OF DECISION

**The decision of First-tier Tribunal Judge Cohen dated 13 June 2022 does not contain an error of law. I therefore uphold the decision with the consequence that the Appellant's appeal remains dismissed.**

L K Smith
**Upper Tribunal Judge Lesley smith**
Judge of the Upper Tribunal
Immigration and Asylum Chamber
**28 April 2023**