IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001828
First-tier Tribunal No:
PA/52889/2023
LP/01524/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2024

Before

UPPER TRIBUNAL JUDGE REEDS

Between

O H
(ANONYMITY ORDER CONTINUED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C. Soltani, on behalf of the appellant
For the Respondent: Mr A. McVeety , Senior Presenting Officer

Heard at (IAC) on 10 July 2024

DECISION AND REASONS

1. The appellant appeals, with permission, against the determination of the First- Tier Tribunal (Judge O'Hanlon) promulgated on 1 February 2024. By its decision, the Tribunal dismissed the appellant's appeal on all grounds against the Secretary of State's decision to refuse his protection and human rights claim.

2. The Upper Tribunal made an anonymity order, and no grounds were submitted during the hearing for such an order to be discharged. Anonymity is granted because the facts of the appeal involve a protection claim.

3. 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.

4. The factual background can be summarised as follows. The appellant is a national of Iran and is of Kurdish ethnicity. The appellant left Iran on 27 April 2021 and having travelled through Turkey, Italy and unknown countries entered the UK on 26 June 2021 by boat. He claimed asylum on that day.

5. The basis of his claim was that he feared persecution on account of activities conducted in Iran based on being a Kolbar and having undertaken activities in support of Sazmani Khabat which he claimed had brought him to the attention of the authorities. He later also claimed to have undertaken sur place activities in the UK against the Iranian authorities.

6. The respondent refused his claim in a decision taken on 17 April 2023. The respondent whilst satisfied that the appellant was a national of Iran and was of Kurdish ethnicity and having left Iran illegally and also having attended demonstrations since arriving in the UK, it was not considered that the appellant would be at risk on return applying the risk factors set out in the relevant authorities. In respect of his claim to have been involved in smuggling political documents in respect of the political party identified, the respondent set out in its reasoning why that part of his claim lacked plausibility and detail such that he had demonstrated the factual basis of his claim.

7. The appellant appealed that decision, and it came before the FtTJ and in a determination promulgated on 1 February 2024, the FtTJ dismissed the appeal. The FtTJ found that the appellant was a Kolbar operating on the Iran/Iraq border. The FtTJ rejected the appellant's account that he had been involved in smuggling political literature whilst in Iran and that the authorities had undertaken a raid on his home. He was therefore not satisfied that the appellant had come to the attention of the Iranian authorities as a result of smuggling political documentation whilst in Iran. As to his sur place claim, the FtTJ found that the demonstrations attended did not suggest that he had come to the attention of the authorities, nor did his social media postings, which were not his original postings but were reposting of other articles. The FtTJ found that he had not previously come to the attention of the Iranian authorities as a result of any political activities and would not be of any significant interest and therefore would not be at risk due to his social media. Applying the risk factors, the FtTJ accepted that he was of Kurdish ethnicity and are left illegally and had been a Kolbar but that he had not been a smuggler of political literature and therefore had not come to the adverse attention of the Iranian authorities. He concluded that the appellant would not be at risk of persecution or serious harm on return.

8. The appellant sought permission to appeal that decision and permission was given by UTJ Kebede on 23 May 2024.

9. The appeal came before the Upper Tribunal and the appellant was represented by Ms Soltani, solicitor advocate and the respondent by Mr McVeety, Senior Presenting Officer.

10. Ms Soltani relied upon the grounds of challenge and expressly the grounds set out at paragraphs (a) and (b) which set out the failure to make findings of fact on material matters. Mr McVeety confirmed that there was no rule 24 response on behalf of the respondent. Both advocates at the hearing provided their oral submissions as summarised below.

11. There is one material issue which forms the basis of the appeal before the Upper Tribunal which is succinctly set out in the grounds which concern the failure of the FtTJ to make a clear finding as to whether or not the appellant had previously come to the adverse attention of the Iranian authorities based on the evidence that was before the FtTJ.

12. Ms Soltani on behalf of the appellant and her oral submissions drew attention to the FtTJ's decision at paragraph 40 and submitted that the FtTJ had found that the appellant was a Kolbar however at paragraph the FtTJ referred to the appellant's evidence (from his witness statement, interview and oral evidence) that 3 to 4 years prior to leaving Iran he had been detained by the authorities as a result of his activities as a Kolbar. The FtTJ referred to some of that evidence at paragraph 44 but made no finding as to whether he had in fact been so detained. She submitted that on an initial reading of that paragraph you would expect a finding to be made however at paragraph 45 the FtTJ referred to the plausibility of his account of smuggling leaflets and at paragraph 47 he set out that he had found he was not satisfied that the appellant had come to the attention of the Iranian authorities as a result of smuggling political leaflets. However she submitted there was no clear finding as to an important feature of the appellant's background. She submitted that the importance that had been set out in the skeleton argument in light of the decision of HB (Kurds), Iran CG [2018] UKUT 430 and that those of Kurdish ethnicity would be subject to heightened scrutiny (see paragraph 15 the ASA) and the risk as a Kolbar relying on the CPIN.

13. In essence she submitted that having found he was a Kolbar it was incumbent on the judge to consider the issue and make a clear finding on whether he had been detained as relevant to the risk on return as this would be part of the assessment of what had taken place before leaving Iran.

14. Mr McVeety on behalf of the respondent confirmed that there was no rule 24 response but submitted that paragraph 44 was a clear finding that the appellant was not detained and therefore had not come to the attention of the authorities. He submitted that at paragraph 44 the FtTJ had recorded the evidence and noted that there was an inconsistency in the evidence.

He submitted that when that was read at paragraph 60 where the FtTJ was considering issue of risk on return and the appellant's representative's submission that the appellant would be at risk as he had been a Kolbar. The FtTJ stated that for the reasons previously given whilst he found him to be a Kolbar he had not found that he had been a smuggler and therefore not come to the adverse attention of the authorities prior to leaving Iran. Mr McVeety submitted that the judge had made a clear finding that he did not come to the attention of the authorities in Iran.

15. Mr McVeety also referred to paragraph 45 on the basis that this paragraph provided an alternative finding based on the word "if" in the context "I do not find it plausible that if the appellant had been aware he was on the radar of the Iranian authorities as a result of his Kolbar activities… That he would have become involved in carrying letters and leaflets…".

16. In summary he submitted that at paragraph 44 the judge did not accept that he was detained under paragraph 45 and the use of the word "if" was an alternative finding. Paragraph 60 was also finding that he was not detained.

17. Ms Soltani by way of reply submitted that paragraph 60 did not have the interpretation put on it as suggested by Mr McVeety and provided no clarity. She submitted that the wording pointed to finding the risk being considered on the basis of smuggling of the political documents but there was no clear finding on the historical matters which were also relevant to issues of risk on return.

Decision on error of law:

18. Whilst the grounds referred to a failure to make findings, that is in reality a failure to give reasons.

19. Appellate case law is replete with descriptions of what is required by way of reasons by lower courts and tribunals. Many of the relevant cases were reviewed in Simetra Global Assets Ltd v Ikon Finance Ltd [2019] EWCA Civ 1413, [2019] 4 WLR 112 by Males LJ (with whom Peter Jackson and McCombe LJJ agreed) at [39]-[47].

20. The key points for present purposes that come out of that review are as follows

    i. A failure to give reasons may be a ground of appeal in itself even where the conclusion reached is one that would have been open to the judge on the evidence.

    ii. The extent of the duty to give reasons, or rather the reach of what is required to fulfil it, depends on the nature of the case. Nonetheless, a judgment needs to make clear not only to the parties but to an appellate court the judge's reasons for his conclusions on the critical issues.

iii. This does not mean that every factor which weighed with the judge in his appraisal of the evidence has to be identified and explained, but the issues the resolution of which were vital to the judge's conclusion should be identified and the manner in which he resolved them explained.

21. In *SB (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 160, at para. 44, Green LJ said that appellate courts will accord due deference to the fact-finder who has assessed an applicant's credibility. But the appellate court needs to be able to satisfy itself that the fact finder has at least identified the most relevant pieces of evidence and given sufficient reasons (which might be quite concise) for accepting or rejecting it.

22. Having had the opportunity to consider the submissions of both advocates and having done so in the context of the decision, I accept the submissions made by Ms Soltani. The fact that neither of the advocates were able to identify where the FtTJ had made a clear finding on a material matter, which was whether the appellant had been detained in Iran in the circumstances in which he had claimed, is supportive of the grounds in this respect.

23. When assessing the issue, and the findings made by the FtTJ he did set out that he had found the appellant to have been a Kolbar (see paragraph 40). This had plainly been an issue as the ASA filed on behalf of the appellant set out this part of his account as a risk factor as separate from the political smuggling (see paragraph 6(a) and (d)). Whilst the FtTJ was correct at paragraph 39 that no specific finding had been set out in the decision letter as to whether or not the appellant was a Kolbar, the respondent's review did set out this issue in the counter schedule at paragraph 5 (1) and expressly referred to the appellant's account of being a Kolbar who had also given an account of having been detained.

24. Whilst the FtTJ made a finding that the appellant's account of being a Kolbar was credible he did not make any other finding clear or otherwise that he had been previously detained in the circumstances in which the appellant had claimed. This is supported by paragraph 41 where having found the appellant had given a credible account of being a Kolbar and stated, "however it is necessary for me to go on to consider whether or not the appellant was smuggling documentation for SK and whether it came to the attention of the Iranian authorities." Therefore no finding was made at paragraph 41 and paragraphs 42 – 43 concern the smuggling activities for the political party identified.

25. At paragraph 44 the FtTJ did set out the appellant's evidence concerning the alleged detention. In this paragraph the judge referred to the appellant's evidence as being "rather different" identifying that in the original claim he had said that the authorities had hassled him, took his loot and then released him but in oral evidence had said that he had been beaten when detained and insulted by his captors. Whilst Mr McVeety

submitted that was a clear finding that he was not detained, I agree with Ms Soltani that this was a recital of the evidence. There was no finding of fact made or assessment and the FtTJ at paragraph 44 then went on to set out the submission of the advocate that he had been beaten by the authorities which would have heightened his resentment against the authorities. That can only be a reference to possible reasons why the appellant claimed he would then be later involved in smuggling political items. There was no finding made at paragraph 44 concerning the earlier detention.

26. Paragraph 45 also does not make any finding of fact or reasons given as to the claimed detention and the word "if" as relied upon by Mr McVeety when read with the rest of paragraph 45 is clearly a reference to the core claim of carrying leaflets for SK. This is further supported by paragraph 47 which is the paragraph which could be described as the summary of the reasoning and whilst the judge did not find the appellant had come to the attention of the authorities due to smuggling leaflets he did not make any finding as to the circumstances of the detention and whether this had brought him to the attention of the authorities.

27. Paragraph 60 does not assist either. At paragraph 59 the FtTJ assessed the risk on return by applying the decision in HB (Kurds) and finding that he was of Kurdish ethnicity which is not in dispute. At paragraph 60 the judge referred to the submission made that the appellant would be a risk on return as he had been a Kolbar. The FtTJ stated that for the reasons given previously he had found the appellant to be a Kolbar but not that he was smuggling leaflets for the political party. The judge stated, "I have not found therefore that the appellant had come to the adverse attention of the Iranian authorities prior to him leaving Iran (previously cited), as the appellant was of no adverse interest to the Iranian authorities, illegal exit on its own, even if combined with Kurdish ethnicity would not mean that the appellant would face persecution.."

28. Reading that paragraph in context demonstrates that the FtTJ was considering risk based on the smuggling of political leaflets. It does not demonstrate that the FtTJ was considering, or had made a finding of fact, relevant to risk of any previous claim detention. I accept the submission made by Ms Soltani that the FtTJ did not make any clear finding on the issue of whether there had been a previous detention or the circumstances of that detention or consider the risk on return based on that in connection with being a Kolbar.

29. Ms Soltani submits that this issue was an important part of the appeal. I am not clear that this factor had that great an emphasis placed on it and whilst the ASA referred to the issue of the appellant being a Kolbar the issue of his previous detention was not made clear. However the respondent's review did refer to that issue in the counter schedule and there was evidence provided at the hearing which was outlined by the FtTJ. The appellant's account was not that he was just a Kolbar but one who had been detained previously. This was a factual issue of some

materiality in light of the ASA which referred to the heightened circumstances in Iran based on the current objective material for those of Kurdish ethnicity, and reference was made to the CPIN. In those circumstances there is a gap in the reasoning and a reader of the decision does not know whether the FtTJ accepted that he had been detained or not and whether if accepted or not this had been factored in to the risk assessment.

30. The views of both advocates were canvassed as to how the appeal should be dealt with and both advocates were of the view that if it was determined that there was no clear finding made on this issue, it was a potential matter of relevance to the overall risk of return and that this was an appeal that ought to be remitted to the FtT.

31. Having set out that the decision involved the making of an error on a point of law the decision is set aside. I have concluded that the remaking of the appeal should take place in the First-tier Tribunal (Begum (remaking or remittal) Bangladesh [2023] UKUT 0046 (IAC) considered). The error goes to the issue of risk on return and requires factual findings to be made on the evidence. I have considered whether or not any factual findings can be retained, either negative findings or positive findings. Having done so I have reached the conclusion that to preserve some findings, whether negative or positive, and not to preserve other findings of fact would lead to difficulties in making an overall assessment of the credibility of the appellant's account and the assessment of risk on return. The issue being a Kolbar and a Kolbar who had been detained different assessments and will require factual assessment on the evidence and this may link to other aspects relevant to risk.

32. I therefore accept the submission made by both advocates that this is appeal that should properly be remitted to the FtT, and no findings are to be preserved.

Notice of Decision:

33. The decision of the FtT is set aside. It stands only as a record of what was said at the hearing. The appeal is remitted to the FtT for a hearing on all issues.

Upper Tribunal Judge Reeds
Upper Tribunal Judge Reeds

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