



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002053

First-tier Tribunal Nos: PA/51799/2023
LP/00446/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 20 September 2024**

Before

UPPER TRIBUNAL JUDGE LANDES

Between

**HP
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Bazini, Counsel instructed by JKR Solicitors

For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 10 September 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, a national of Iran, appeals the decision of Judge Parkes promulgated on 12 March 2024 dismissing his appeal from the respondent's decision of 12 March 2023 refusing his international protection and human rights claim made on 8 February 2021 when the appellant was aged 17.

2. Permission was granted by First-tier Tribunal Judge Scott.
3. There is only one ground, failure to have regard to material considerations. Judge Parkes found that the appellant's claim was generally consistent with background material, however he found at paragraph 20 that the appellant's evidence was at odds with the evidence relating to the actions of the authorities. He said, "*it is not clear why the appellant's father would not have been detained by the security forces, as the head of the household he would be regarded as being responsible for the actions of his son and the appellant was still a minor at that time.*" His findings at paragraph 20 appear to be based on his findings at paragraph 18 that "*where the individual wanted by the Iranian authorities is not available family members will incur the adverse attention of the authorities and it is common for family members to be detained in place of the actual suspect*".
4. The grounds point out correctly that the judge did not identify the source of his findings at paragraph 18. Insofar as it is based on the reasons for refusal letter the grounds say that the specific point is made in the skeleton argument that the source material relied on by the respondent is not in fact worded in the absolute way suggested in the reasons for refusal letter, and in particular the material says only that family members may be at risk and this varies from case to case, so for example that punishment varies depending on the activity level of the activist and it is only in some cases that the families have been arrested.
5. I have heard submissions from Ms Lecointe. She has taken me in particular to paragraphs 14.6.3 and 14.6.4 of the CPIN Iran: Kurds and Kurdish political groups of May 2022 and she mentions what was said on the appellant's behalf at paragraph 26 of the skeleton argument. It is right to say that when one looks at particular sentences in isolation both in the CPIN and in the appellant's skeleton argument they could be capable of bearing the meaning that the judge has put on it, but the entire section in the CPIN must be considered as a whole. Similarly, when paragraph 26 of the appellant's skeleton argument is read in its entirety, the submission is quite clear that the language of the CPIN is not in absolute terms and it is not suggested that the Ettela'at operate a uniform policy.
6. I agree with Mr Bazini in his submissions and with Mr Bradshaw, the author of the grounds, that the source material is far more general and not specific (see for example at paragraph 14.6.2 CPIN "*the approach taken by the authorities towards the family can vary from case to case*") and by failing to engage with the entirety of that material the judge did make an error of law. His conclusion that the appellant's evidence is at odds with the actions of the authorities is inadequately reasoned. The source material in the CPIN does not positively indicate that the appellant's father would have been detained immediately by the authorities. Further the appellant's evidence was that he was not in contact with his family since he had been in the UK. The appellant could not therefore say if a family member had been subsequently detained or if the family had experienced harassment. The judge drew an adverse inference from the lack of evidence that the appellant's family had experienced difficulties with security forces, but no adverse inferences could rationally be drawn if the absence of evidence were due to lack of knowledge.
7. I consider that the error complained of in the grounds is made out and it is a material error because the judge otherwise found the appellant's account to be consistent with background material. The error is not only relevant to the assessment of the appellant's claimed activities as a kolbar but also relevant to

the judge's assessment of the genuine nature of the sur place activity and to the risk from military service. So it runs throughout and if the judge had appropriately engaged with the source material, I cannot say that he would have come to the same conclusion.

8. I therefore set aside the decision for material error of law.
9. Having heard submissions from the representatives about where the appeal should be reheard, I conclude that it should be remitted to the First-tier for rehearing by a judge other than Judge Parkes and with no findings preserved. I do so because of the extent of the fact finding necessary given the appeal turns on the credibility of the appellant's account. A Kurdish Sorani interpreter will be required.

Notice of Decision

The judge's decision involved the making of a material error of law and is set aside with no findings of fact preserved.

The appeal is remitted to the First-Tier Tribunal to be heard by a different judge.

A-R Landes

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 September 2024