IAC-PE-AW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01540/2014

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 5th February 2015	**On 13th February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRENCH

Between

MOHAMMAD ZANDI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran who claims to be a Christian convert. His appeal against a decision to remove him following refusal of his asylum claim was dismissed by First-tier Tribunal Judge Broe following hearings on 8th April and 16th June 2014. The Appellant, who is representing himself but with the assistance of Lifeline Options Community, applied for permission to appeal to this Tribunal.

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2. The primary ground of application was the absence of findings on the evidence of one of the witnesses, Delsoo Heidari. It was said that the judge had failed to make a finding upon the evidence of that witness. It was further said that the judge in disbelieving the evidence of other witnesses had not stated whether he regarded them as deluded or as parties to a plan to give false witness. Finally reference was made to background evidence as to the position of Christians in Iran and the potential relevance of the decision of the Supreme Court in **HJ (Iran) v SSHD [2010] UKSC 31**. In granting permission to appeal First-tier Tribunal Judge Denson expressed the view that the testimony of the witness Heidari was crucial in making any credibility finding in relation to the Appellant's account and that the failure to make such a finding was an arguable error of law. Following the grant of permission to appeal the Respondent put in a response under Upper Tribunal Procedure Rule 24 stating that although the judge's failure to refer expressly to the evidence of the witness was unfortunate it did not establish an error capable of vitiating the outcome of the appeal.

3. At the hearing before me the Appellant appeared in person. Although he speaks some English it is far from fluent. There was no Farsi interpreter available. He was assisted by Mr Forbes of Lifeline Options Community in the capacity of a McKenzie Friend. As the Appellant was representing himself I asked Mr Mills to address me first so there was clarity as to the likely issues. He relied upon the Rule 24 response. The Appellant had in fact also put in a reply to that response which was copied for the Presenting Officer. Mr Mills accepted that some would say that it was legally erroneous for the judge not to have made express findings on the evidence of Mr Heidari but he contended that if this was the case the omission was not material. The evidence of that witness could not have made sufficient difference for the Appellant to be believed in the light of previous adverse findings and the judge had given other good reasons for disbelieving that the Appellant's claimed conversion was genuine. Whether other witnesses were deluded or conspiring made no difference. It did not matter whether they were tricked or were disingenuous. The judge did not believe their evidence which was intended to establish that the Appellant was a genuine convert.

4. The Appellant then addressed me, having discussed matters with Mr Forbes. He said that the witness Heidari had explained how he had converted to Christianity in England and how they had been in the same house. He had given the witness a Bible and encouraged him to follow Christianity. The witness had liked the Bible. He went to church and had since converted. Mr Mills then submitted that what the Appellant had said did not really take the matter any further than what had been recorded in the judge's decision at paragraphs 24 and 25. I said that I wished to check the judge's Record of Proceedings before coming to a decision. Mr Mills accepted that if I found there was a material error the appropriate course would be to remit the appeal to the First-tier Tribunal for a further hearing. It would not have been possible for me to deal with the matter as there was no interpreter present and neither were any of the witnesses.

5. The decision of Judge Broe is a careful and detailed document. I have checked the Record of Proceedings and it does appear that the evidence of Mr Heidari as set out in his letter which he adopted and in his evidence as recorded at paragraphs 24 and 25 of the decision covers substantially what was said. Those paragraphs read as follows:

> "24. Mr Delsoo Heidari gave evidence and adopted as his statement a letter in which he said that he met the Appellant in Iran when they worked together in a factory. He next saw him in London in 2011. He said that the Appellant invited him to be a Christian but he did not have enough knowledge. The Appellant gave him a Bible in Farsi which gave him an eagerness to find out about Christianity. He has been to church to boost his knowledge and would like to prepare for baptism.
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> 25. When cross-examined he said that he met the Appellant in this country because he was 'at the same address that I lived'. They had not discussed Christianity before he came to the country. He said that he had been granted leave to remain because he had converted."

6. It was apparent from the Record of Proceedings that the reference in paragraph 24 to "He did not have enough knowledge" related to the witness rather than to the Appellant. It was also stated in the oral evidence that the witness had been granted asylum on the basis of his conversion. He had been baptised in early 2013.

7. It is not in dispute that the judge did not make any specific finding upon whether that evidence was true or not. As the Respondent accepted that was unfortunate. It may well be that even if the judge had found that the evidence given was true that he would have come to the conclusion that the Appellant himself was being duplicitous in his behaviour towards the witness. However there is no finding in that regard. On the other hand given the context that the witness, according to his evidence, was led into the Christian faith by the Appellant, who lent him a Bible in Farsi and encouraged him to read it and that subsequently that witness has been baptised and, I was told, has been accepted as a refugee on the basis of his conversion then potentially that evidence might have led to a different conclusion. It is impossible for me to speculate as to what the judge's view would have been had he made an assessment of that evidence, as he should have done, and weighed it in the round with the other evidence given.

8. It has recently been made clear in the reported decision of **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** that reasons must be given for believing or not believing evidence. In this case there is a lack of a finding as to whether the evidence was believed or not believed at all; *a fortiori* that must be an error of law and it was material as it could have led to a different conclusion. I therefore set aside the decision of Judge Broe. It is necessary for the whole of the evidence upon which

findings have been made to be considered in order to reach a sustainable conclusion. I noted that there was no challenge by the Appellant to the decision relating to Article 8 ECHR and it does seem unlikely that the Appellant could succeed under this head if he fails otherwise. However I will not restrict the terms of remittal in case other factors have intervened.

9. I was not in a position to rehear the appeal in any way on the same occasion for the reasons mentioned above. This matter turns very much on credibility. As fresh findings of fact fall to be made in the light of all of the evidence and having regard to Statement 7.2(b) of the Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal I remit the appeal to the First-tier Tribunal under the provisions of Section 12(2)(b)(i) of the Tribunals Courts and Enforcement Act 2007 in accordance with the directions below.

Notice of Decision

The making of the decision before the First-tier Tribunal involved a material error on a point of law and I have set aside that decision. The appeal is remitted to the First-tier Tribunal to be re-decided in accordance with the directions below.

No anonymity direction is made.

DIRECTIONS MADE UNDER SECTION 12(3)(A) AND 12(3)(B) OF THE TRIBUNALS COURTS AND ENFORCEMENT ACT 2007

(1) The judge or judges of the First-tier Tribunal who are to reconsider the appeal should not include Judges Broe or Crawford.

(2) None of the findings of Judge Broe are preserved.

(3) The appropriate hearing centre is Birmingham and a Dari interpreter will be required.

(4) The parties are to serve upon the Tribunal and upon each other any other evidence, including witness statements, upon which they seek to rely at least seven days before the hearing.

Signed Date 12 February 2015

Deputy Upper Tribunal Judge French