



IAC-AH-KEW-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/11447/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 10<sup>th</sup> July 2015**

**Decision & Reasons Promulgated  
On 24<sup>th</sup> July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HALL  
DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MA  
(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer

For the Respondent: Mr G Brown of Counsel, instructed by Knights Law Solicitors

**DECISION AND REASONS**

**Immigration History and Background**

1. The Secretary of State appealed against a decision of Judge of First-tier Tribunal Mitchell promulgated on 2<sup>nd</sup> March 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and we will refer to him as the Claimant.

3. The Claimant is a male citizen of Afghanistan born 5<sup>th</sup> June 1982 who entered the United Kingdom clandestinely on 27<sup>th</sup> March 2002 and claimed asylum.
4. His asylum claim was refused and his subsequent appeal dismissed. He was removed from the United Kingdom on 12<sup>th</sup> September 2006. On a date unknown the Claimant re-entered the United Kingdom.
5. On 20<sup>th</sup> July 2012 the Claimant made further submissions to the Respondent, claiming that he was entitled to asylum by reason of his ethnicity as a Hazara and his political opinion. On 13<sup>th</sup> June 2013 the Claimant submitted further representations claiming that he would be at risk if returned to Afghanistan because of his conversion to Christianity.
6. The Claimant was interviewed in connection with these further submissions on 15<sup>th</sup> June 2014. On 7<sup>th</sup> October 2014 the Secretary of State issued a reasons for refusal letter explaining why the Claimant's application had been refused, and on 14<sup>th</sup> October 2014 issued a Notice of Immigration Decision which indicated that a decision had been taken to remove the Claimant from the United Kingdom. In brief summary the Secretary of State refused the application, not accepting that the Claimant would be at risk if returned to Afghanistan. It was however accepted that he had been baptised on 2<sup>nd</sup> June 2013 and in accordance with NM (Christian Converts) Afghanistan CG [2009] UKAIT 00045 it was accepted that if the Claimant had genuinely converted to Christianity, then a grant of asylum would be appropriate.
7. The Secretary of State noted that the Claimant had not provided any letters of support from members of the church he claimed to attend. It was also noted that while he answered some questions about Christianity correctly when interviewed, there were other questions where he displayed a lack of knowledge. The Secretary of State was of the opinion that the knowledge he had displayed about Christianity was a repetition of learned facts rather than a genuine display of faith and his claim was considered to be a fabrication and it was not accepted that he had genuinely converted to Christianity. In addition it was not accepted that the Claimant was entitled to humanitarian protection, nor that there would be a breach of his human rights if he was removed from the United Kingdom.
8. The Claimant's appeal was heard by Judge Mitchell (the judge) on 20<sup>th</sup> February 2015. The judge found that the Claimant is a genuine convert to Christianity and therefore allowed his appeal on asylum grounds. Because of the findings that the Appellant would be at risk if returned to Afghanistan the appeal was also allowed with reference to Articles 2 and 3 of the 1950 European Convention on Human Rights (the 1950 Convention). The judge did not accept that the Claimant was entitled to succeed with his appeal in relation to Article 8 of the 1950 Convention neither did the judge accept the Appellant's claim that he had not in fact been removed from the United Kingdom on 12<sup>th</sup> September 2006. The Claimant had also contended that he had been unlawfully deprived of the

benefits of the Secretary of State's ELR policy relating to Afghanistan for failed asylum seekers, and the judge found that he was not entitled to have his case considered with reference to that policy.

9. The Secretary of State applied for permission to appeal to the Upper Tribunal contending that the judge had made a material misdirection of law by misapplying the principles set out in Ali Dorodian 01TH01537 in that the judge had accepted the Claimant's disputed conversion without hearing any evidence from a minister of the church or parish priest. The judge had relied only upon the Claimant's evidence.
10. Permission to appeal was granted and at a hearing on 15<sup>th</sup> May 2015 Deputy Upper Tribunal Judge Hall found that the judge had erred in not correctly applying the principles in Dorodian and set aside the decision of the First-tier Tribunal and indicated that the decision would be re-made by the Upper Tribunal. The findings made by the First-tier Tribunal that the Appellant had been removed from the United Kingdom on 12<sup>th</sup> September 2006 and that he re-entered this country illegally in 2010 were preserved, as were the findings that the Claimant was not entitled to the benefit of the Secretary of State's ELR policy on Afghanistan. In addition the findings of the First-tier Tribunal that the Claimant's appeal could not succeed with reference to Article 8 were preserved.
11. The hearing was adjourned to enable the Claimant, who was not legally represented, to give evidence, and arrange for his parish priest to attend the hearing. The purpose of the Upper Tribunal hearing would be to assess the evidence, and decide whether the Claimant's conversion to Christianity is genuine.

### **The Upper Tribunal Hearing - 10<sup>th</sup> July 2015**

#### Preliminary Issues

12. The Claimant attended, and was represented by Mr Brown of Counsel. We were told that no interpreter would be required.
13. We ascertained that we had received all documentation upon which the parties intended to rely, and that each party had served the other with any documentation upon which reliance was to be placed.
14. We had received the Respondent's bundle that had been before the First-tier, and the Claimant's bundle comprising 151 pages. In addition there was a further letter from Father Duncan McVicar dated 5<sup>th</sup> July 2015.
15. Both representatives had seen the error of law decision produced following the hearing on 15<sup>th</sup> May 2015, and understood that the issue before the Upper Tribunal was whether the Claimant was a genuine convert to Christianity.
16. Both representatives indicated that they were ready to proceed and there was no application for an adjournment.

## Oral Evidence

17. We firstly heard from the Claimant who adopted his witness statement dated 13<sup>th</sup> February 2015. The Claimant was questioned by both representatives and we have recorded all questions and answers in our Record of Proceedings and it is not necessary to reiterate them in full here. The Claimant's evidence may be summarised as follows.
18. In relation to his conversion to Christianity the Claimant had started to attend church regularly in the United Kingdom in 2003. He referred to Sister Barbara who would discuss the Catholic faith with him. However the Claimant only started to seriously study the Christian faith about a year before he was baptised on 2<sup>nd</sup> June 2013.
19. The Claimant reads the Bible on a regular basis and regularly attends church. He was interviewed in connection with his claim to have converted to Christianity on 15<sup>th</sup> June 2014, and his view of the interview was that he was able to demonstrate a good understanding of his faith, but he accepted that he still learning about his new faith. He felt that the Secretary of State was wrong and unreasonable to find that because he could not answer every question, this meant that he was not a genuine Christian.
20. We then heard evidence from Father McVicar who adopted the contents of his letter dated 5<sup>th</sup> July 2015 in which he confirmed that he met the Claimant at the end of 2012 and described him as an active member of his parish community. It was confirmed that the Claimant attends church regularly and Father McVicar carried out his baptism and he became a Roman Catholic Christian on 2<sup>nd</sup> June 2013. Father McVicar's letter confirms that he has no hesitation in confirming that the conversion from Islam to Christianity is genuine.
21. We have recorded all of Father McVicar's evidence in our Record of Proceedings and it is not necessary to set it out in full here. The evidence may be summarised as follows.
22. Father McVicar explained that his church has six safeguards to ensure that a baptism is genuine.
23. Firstly there must be a formal interview between the candidate for baptism and the priest so that the priest can assess whether the candidate is genuine.
24. Secondly every candidate must attend a course of instruction in the Christian faith which may be carried out at group level or on a one-to-one basis depending on the circumstances. This would normally last between four and six months. Father McVicar confirmed that the Claimant attended all the meetings.
25. Thirdly every candidate must take part in the life of the local parish. At a minimum he or she must attend church every Sunday. It was confirmed

that the Claimant had attended church every Sunday since the process started.

26. Fourthly when the course of instruction has been completed, there must be another meeting between the priest and the candidate, and if the candidate wishes to continue, there must be an application made to the diocese in a formal way. The candidate must sign a declaration and this is sent to a Tribunal, and if approved, permission is given to the priest to baptise. This means that a priest cannot carry out a baptism without permission.
27. Fifthly there must be a sponsor from the local Christian community, and in this case it must be a practising Roman Catholic Christian over 16 years of age. The Claimant had such a sponsor.
28. Sixthly at the end of the process, a baptism ceremony is performed in public so that the parish community can have full knowledge of the event, and if anybody knows of any reason why a candidate is not suitable they can speak up.
29. Father McVicar stated that he has no doubt that the Claimant's conversion to Christianity is genuine. He has witnessed his attendance at church and his willingness to take on responsibility within the church. Numerous members of the church have signed letters confirming their support for the Claimant, and confirming their belief that he is a genuine Christian.
30. Father McVicar stated that his church receives between four and eight converts to Christianity per year, and he estimated that 20%-25% of these are individuals from foreign countries.

### **The Secretary of State's Submissions**

31. Mr Harrison commented that it was clear from Father McVicar's evidence that the Claimant had been accepted wholeheartedly by the parish community as a genuine Christian convert.

### **The Claimant's Submissions**

32. Mr Brown submitted that the burden of proof had been discharged. Father McVicar had explained the rigorous process that preceded baptism and had expressed wholeheartedly and unequivocally, his belief that the Claimant's conversion to Christianity is genuine. We were therefore asked to allow the appeal.
33. At the conclusion of oral submissions we reserved our decision.

### **Our Conclusions and Reasons**

34. We have taken into account all the evidence placed before us, together with the submissions of both representatives. The burden of proof is on the Claimant, and can be described as a reasonable degree of likelihood.

35. It has been accepted by the Secretary of State that if the Claimant's conversion to Christianity is genuine, then he is entitled to a grant of asylum. That is the issue that we have to consider.
36. We have taken into account the Claimant's immigration history and the fact that he was initially refused asylum and his subsequent appeal was dismissed on 28<sup>th</sup> December 2004.
37. We have also taken into account that the Appellant's claim not to have been removed from the United Kingdom on 12<sup>th</sup> September 2006 has not been believed.
38. The Secretary of State accepts that the Claimant has been baptised as a Roman Catholic Christian and that this baptism took place on 2<sup>nd</sup> June 2013. We are satisfied that the Claimant's conversion to Christianity is genuine.
39. We place weight upon the Claimant's evidence on this issue, and very significant weight upon Father McVicar's evidence. We found Father McVicar to be an impressive and credible witness who took time to explain the safeguards and procedures which are carried out prior to baptism. Baptism is a serious commitment, but it may be the case that some individuals profess to have converted to Christianity, simply in order to remain in the United Kingdom, and their conversion is not genuine. We formed the opinion after listening to Father McVicar's evidence that the church is aware of this possibility which is why rigorous safeguards are in place.
40. Father McVicar's evidence was unequivocal and was accepted by Mr Harrison on behalf of the Secretary of State.
41. The picture painted of the Appellant is of a relatively new convert to Christianity who regularly attends church, reads the Bible, and engages fully with parish life.
42. He did not have an encyclopaedic knowledge of Christianity when interviewed, but we find that this does not detract from the genuineness of his conversion, having taken into account Father McVicar's evidence.
43. In addition, we note that contained within the Claimant's bundle of documents at pages 68 to 88, are numerous letters from members of the parish community confirming their support for the Claimant, and their belief that he is a genuine Christian.
44. Having accepted the evidence placed before us, we find that the Claimant's conversion to Christianity is genuine, and he is therefore entitled to a grant of asylum.
45. Because he is entitled to asylum, he is not entitled to a grant of humanitarian protection. Because of our findings in relation to asylum, we also find that the Appellant would be at risk of treatment that would breach Article 3 of the 1950 Convention if he was removed to Afghanistan.

## **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. We substitute a fresh decision as follows. We allow the Claimant's appeal on asylum grounds.

The Claimant is not entitled to humanitarian protection.

We allow the Claimant's appeal on human rights grounds in relation to Article 3 of the 1950 Convention.

## **Anonymity**

The First-tier Tribunal made an anonymity direction in relation to the Claimant's identity. We continue that direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date 13<sup>th</sup> July 2015

Deputy Upper Tribunal Judge M A Hall

## **TO THE RESPONDENT FEE AWARD**

The Claimant's appeal has been allowed because of evidence that was available to the Tribunal that was not placed before the Secretary of State when the initial decision was made. There is no fee award.

Signed

Date 13<sup>th</sup> July 2015

Deputy Upper Tribunal Judge M A Hall