



IAC-FH-AR-V1

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

Appeal Number: DA/01350/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 September 2015**

**Decision & Reasons Promulgated  
On 13 October 2015**

**Before**

**THE HONOURABLE LORD BURNS  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE BLUM**

**Between**

**MZS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Karnik, Counsel; Fadiga & Co Solicitors

For the Respondent: Miss Savage; Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1 This is the Secretary of State's appeal (referred to as the respondent in this decision) against a decision of the First-tier Tribunal dated 11 February 2015 allowing the appellant's appeal under Article 3 of the ECHR against a decision to make a deportation order pursuant to the automatic deportation provisions contained in the UK Borders Act 2007.

- 2 The appellant is a national of Afganistan who entered the UK illegally on 10 December 2007 and claimed asylum. This was refused. In 2008 attempts to remove him on a number of occasions failed. He applied for judicial review of removal directions in January 2009 which he withdrew on the basis that the respondent would reconsider the refusal of his claim within the UK. He was released from immigration detention. He was interviewed with an interpreter on 11 February 2011.
- 3 On 8 July 2013 the appellant was convicted of sexual assault of a 15 year old boy. He was sentenced to 10 months imprisonment. On 13 September 2013 he was convicted of two counts of causing or inciting two 13 year old boys to engage in sexual activity. He was sentenced to 2 years 6 months imprisonment. The sexual assault was committed after the causing or inciting offence and when on bail. The two sentences ran concurrently.
- 4 On 8 October 2013 the appellant was notified that he was liable to automatic deportation. He advanced reasons why he should not be deported but by letter of 30 June 2014 his asylum claim was refused. He appealed to the First tier Tribunal.
- 5 The appellant's claim for asylum was based on his fear of ill treatment on return to Afganistan due to his imputed political opinion and to his conversion to Christianity. However, the judge found that the appellant had been convicted of a particularly serious crime and upheld the respondent's certificate issued under section 72(9)(b) of the Nationality, Immigration and Asylum Act 2002. He therefore dismissed the appeal advanced under the Refugee Convention. He noted at paragraph 27 that the appellant was still in denial about the offences
- 6 At paragraph 31 the judge dealt with an issue relating to the appellant's credibility. He claimed to have seen his brother being stabbed in the chest with a bayonet when in Afgansitan but had failed to mention this at the asylum interview or in his witness statement of 27/7/09. The judge found that the appellant had fabricated this aspect of his claim.
- 7 The judge heard oral evidence about the appellant's conversion to Christianity from the appellant and one witness, Mr Azizi. The appellant stated that he first became interested in the Christian faith when his family moved from Afganistan to Iran when his father worked for a Christian man. While at Harmonsworth Detention Centre that interest flourished and he was baptised on 7 January 2009. He spoke to the genuine nature of his conversion. Mr Azizi, also a Christian, had met the appellant at Harmonsworth and supported the appellant's evidence in this regard.
- 8 The appellant produced a letter dated January 2015 from the Chaplain at Harmonsworth who baptised the appellant and two letters, dated 1 February 2012 and 17 September 2014, from the Pastor of the Elim

International Christian Centre in Croydon whose church the appellant had attended since 2010. He also produced a letter from the Chaplain at HMP Littlehey dated 7 July 2014 stating that the appellant had attended regularly while in prison. These letters attested to the sincerity of the appellant's belief. The appellant had given evidence as to the threats he received in prison from Muslims as a result of his claimed conversion.

- 9 At paragraph 47 the judge found the appellant and his witness to be credible and accepted that the appellant was a practising Christian.
- 10 Miss Savage for the Secretary of State argued that the Tribunal failed to provide adequate reasons at paragraph 47 of its determination as to why the appellant's claim that he is a genuine convert to Christianity and is a practising Christian is credible. At 47 the judge said this:

“I have had the benefit of hearing evidence from the appellant and the witness. I find that they both gave their evidence in a straightforward manner without exaggeration or embellishment. I find them to be credible witnesses. After considering the written and oral evidence, I find that the appellant has genuinely converted to Christianity and accept that he is a practising Christian.”
- 11 As a result, the judge found that his removal to Afghanistan would lead to a real risk of a breach of Article 3 of ECHR and accordingly the Tribunal allowed the appeal on human rights grounds on the basis of Article 3 of the Convention.
- 12 This was against the background acknowledged at paragraph 32 that the appellant fabricated the aspect of his claim described above. Further, the judge acknowledged that the appellant was in denial in relation to the offences of which he was found guilty which related to the sexual assault of young boys. At paragraph 35 the judge refused to accept the appellant's claimed age and preferred the age assessment report which found his age to be about two years older.
- 13 Miss Savage argued that all these matters raised real questions on the credibility of the appellant and required a reasoned assessment of why the Tribunal was able to accept the appellant's evidence that he had converted to Christianity. She referred to **R (Iran) v Secretary of State [2005] EWCA Civ 982** and **MK (Duty to give reasons) Pakistan [2013] UKUT 00641**.
- 14 Mr Karnik submitted that the Tribunal was entitled to find the appellant credible and that the reasoning given was adequate. There was supporting evidence from a friend of the appellant, Mr Azizi, who confirmed that the appellant was a genuine Christian. The judge was entitled to accept that evidence. Furthermore there was documentary evidence in the form of letters described above which attested to the genuineness of the appellant's conversion to Christianity.

- 15 Paragraph 47 is the judge's conclusion upon the evidence he heard. He narrates that, having had the benefit of hearing from the appellant himself and his witness Mr Azizi, he found that the manner in which both gave evidence was straightforward and without exaggeration and embellishment and were credible. That appears to us to be a properly articulated conclusion of the impression gained by the Tribunal of the demeanour of the witnesses justifying the finding of credibility. No more was required. As was pointed out in **Flannery v Halifax Estate Agencies [2001] All ER 373** (cited in **MK duty to give reasons**), the extent of the duty to give reasons depends upon the subject matter. Where a straightforward factual dispute exists, dependent upon which witness is telling the truth, it is likely to be enough for the judge, having summarised the evidence, to indicate simply that he believes a witness. In other situations, for example where reasons and analysis have been advanced on either side, the judge must enter into the issues canvassed and explain why he prefers one case over the other. It seems to us that this case falls into the former category and that the Tribunal judge has given an adequately reasoned decision on credibility. She does not expressly refer in this paragraph to the adverse findings on the credibility of the appellant but we cannot conclude from the absence of such reference that she ignored them. She has considered and set them out earlier in the determination. The fact that the appellant had been found to have fabricated one aspect of his claim did not preclude the judge from accepting the oral and written evidence on the matter of his conversion to Christianity.
- 16 The judge then goes on at paragraph 47 to narrate that she has considered both the written and the oral evidence. Accordingly, having accepted as credible both the appellant and his witness, she also had regard to the letters from the two chaplains and the pastor referred to. Those sources of evidence, which the Tribunal was entitled to accept, pointed in the same direction as the oral evidence. In combination, that was sufficient to entitle the Tribunal to find as it did. Read as a whole, it seems to us implicit that the factors adverse to credibility were, in the view of the judge, outweighed by that combination.
- 17 It is correct to say that the appellant gave different accounts of the stage at which his interest in Christianity or the Christian faith first arose. At paragraph 18 it is stated that he had asserted in his case that he became interested in Christianity when detained at Harmondsworth Immigration Removal Centre. However, at paragraph 43 when rehearsing the appellant's evidence, it is narrated that he stated that he first became interested in the Christian faith when his family moved from Afghanistan to Iran. However, as Mr Karnik pointed out, there were problems of interpretation associated with the appellant's ability to give a history and the Tribunal cannot be criticised for preferring the evidence given before them over information contained in the case papers. Furthermore, it is plain from the interview to which the appellant was subjected on 4 February 2011 which starts at page 33 of the appellant's bundle that he was asked at

question 160 what religion he was, to which he answered Muslim. However, on clarification it appears that the appellant had misunderstood the question asked. (See question 163).

18. Having regard to the aforementioned considerations we are not persuaded that the First-tier Tribunal judge materially erred in law.

**Notice of Decision**

**19 We dismiss the Secretary of State for the Home Department's appeal. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



13 October 2015

Signed

Date

Judge Blum  
Judge of the Upper Tribunal