



IAC-AH-DN-V1

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

Appeal Number: AA/07479/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 4<sup>th</sup> April 2016**

**Decision & Reasons  
Promulgated**

**On 14<sup>th</sup> April 2016**

**Before**

**UPPER TRIBUNAL JUDGE HEMINGWAY**

**Between**

**[F B]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms G Patel (Counsel)

For the Respondent: Mrs R Pettersen (Home Office Presenting Officer)

**DECISION AND DIRECTIONS**

1. In a determination promulgated after a hearing of 27<sup>th</sup> October 2015, I set aside a decision of the First-tier Tribunal, which had been promulgated on 31<sup>st</sup> July 2015, dismissing the Appellant's appeal against the Respondent's decision of 10<sup>th</sup> April 2015 refusing to grant him entry clearance or any other form of international protection.

2. My reasons for setting the decision of the First-tier Tribunal aside are set out in full in my determination but, very broadly, I thought the First-tier Tribunal had erred in the way in which it had gone about assessing the Appellant's credibility.
3. Having set the decision aside I decided that the decision ought to be remade in the Upper Tribunal on a later occasion. I made that decision on the basis of the information which was then before me. I anticipated that the Appellant, with respect to the remaking of the decision, would simply rely upon the original basis for his asylum claim which was, again in very broad terms, to the effect that he would be at risk upon return on the basis of imputed political opinion.
4. The matter was listed before me, for remaking, on 4<sup>th</sup> April 2016. In considering the file of papers I noted that the Appellant had, since my decision, indicated that he had converted to Christianity and that he now claimed to be at risk upon return to Iran on that basis too. It was clear that the Appellant intended me to consider this new part of his claim when remaking the decision. It is also clear that nothing of the detail of that claim has ever been or could possibly have been before the original decision-maker nor the First-tier Tribunal. In the circumstances I expressed, to the representatives, some doubt as to whether it would still be appropriate for me to remake the decision in the Upper Tribunal as this would effectively mean a second stage Appellate Tribunal having to make initial findings of fact in circumstances where there had been no previous findings or previous consideration of the Christianity claim at all.
5. After considering her position and discussing matters with her client and her instructing solicitors, Ms Patel did indicate she now wished the matter to be remitted to the First-tier Tribunal and so applied. Mrs Pettersen did not oppose that application. It does seem to me in these unusual circumstances that, despite my initial view that remaking in the Upper Tribunal would be appropriate, it is now much more appropriate for that task to be undertaken by the First-tier Tribunal in its capacity as an expert first instance fact-finding body.
6. Accordingly, therefore, my having already set the decision aside, the case is remitted to the First-tier Tribunal with nothing preserved from the previous determination of Judge Dickson.

### **Directions to the First-tier Tribunal upon Remittal**

- A. The case is remitted to the First-tier Tribunal to be heard by a judge other than Judge N P Dickson. It shall be heard at the Bradford Hearing Centre.
- B. Nothing shall be preserved from the previous determination of the First-tier Tribunal.
- C. There shall, in this case, be a Case Management Review hearing before the First-tier Tribunal as this will give that body the opportunity to consider how it should deal with the new aspect of the appeal being the claimed Christian conversion. It will also be appropriate, at that hearing, to

consider the time estimate for the full hearing, any matters of witness availability and any interpreter requirements.

- D. There are two bundles on the Upper Tribunal file which have been lodged by the Appellant's solicitors. These bundles were sent under covering letters of 13<sup>th</sup> July 2015 and 24<sup>th</sup> December 2015. It is not necessary for the Appellant's solicitors to re-file the documents contained within those bundles but if any further documentation, including witness statements and background country material, is to be relied upon by the Appellant then this must be sent to the First-tier Tribunal (and a copy sent to the Respondent), in a paginated and indexed bundle with a schedule of essential reading if appropriate, at least five working days prior to the date which will be fixed for the hearing. Similarly, if the Respondent seeks to rely upon any documentation not previously filed, she must also adhere to the same requirements.
- E. The First-tier Tribunal, insofar as is practicable, shall have regard to the availability of Canon David Mumby, who is to be called as a witness concerning the claimed Christian conversion, when relisting the matter. He is currently available on any Monday in May, June, July and August other than 23<sup>rd</sup> May and 8<sup>th</sup> and 15<sup>th</sup> August although, realistically, I appreciate it may not be possible to have the appeal listed as soon as that.

### **Notice of Decision**

The decision of the First-tier Tribunal has already been set aside on account of legal error. The appeal is now remitted to the First-tier Tribunal so that the decision may be remade.

I make no anonymity direction.

Signed

Date

Upper Tribunal Judge Hemingway

### **TO THE RESPONDENT FEE AWARD**

No fee is paid or payable and there cannot, therefore be any fee award.

Signed

Date

Upper Tribunal Judge Hemingway