Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/00389/2017**

THE IMMIGRATION ACTS

Heard at Stoke	**Decision & Reasons Promulgated**
On 14th June 2017	**On 13th July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR A G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, Solicitor
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 21st May 1984. The Appellant has an extensive immigration history having previously made applications for student visas the last of which made on 8th March 2009 was successful. The Appellant returned to Iran and latterly claims to have left Iran in June 2016 assisted by an agent arriving in the UK on 2nd July 2016 when he claimed asylum. The Appellant's basis for asylum is that he fears if returned to Iran he will face mistreatment due to his political opinion as he has claimed to have written blogs and been accused of anti-government activities by the authorities. However in his screening interview the

Appellant's claim for asylum was based upon a fear that if returned to Iran he will be executed because he had converted to Christianity from Islam and that as a result the authorities had an adverse interest in him. The Appellant's application was refused by Notice of Refusal dated 30th December 2016. The application of the Appellant's wife SN, who travelled with him to the UK, is dependent upon the Appellant's appeal.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Parker at Stoke on 13th February 2017. In a decision and reasons promulgated on 27th February 2017 the Appellant's appeal was dismissed on all grounds. Judge Parker however did grant the Appellant anonymity. No application is made to vary that order and I maintain it.

3. On 27th February 2017 Grounds of Appeal were lodged to the Upper Tribunal. On 23rd March 2017 First-tier Tribunal Judge Gillespie granted the Appellant permission to appeal. Judge Gillespie considered that it was arguable, as averred in the Grounds of Appeal, that the First-tier Tribunal Judge materially erred in his assessment of the genuineness of the Appellant's alleged conversion by mistakenly considering his church attendance to be a "belated" device when he had in fact been attending a Christian congregation since the month following his arrival in the United Kingdom. Further he considered that it was likewise arguable that the learned judge erred in his definitive finding that there can be no interference by Iranian authorities in the site, blogfa.com, without addressing, or giving reasons to disregard, such evidence to the contrary as might have been advanced by the Appellant.

4. On 13th April 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is noted therein that it was asserted that the First-tier Tribunal Judge considered all the material relied on by the Appellant to come to the decision and that it was clear from the decision that the Appellant's knowledge of Christianity was limited and also during cross-examination the Appellant himself said that religion had nothing to do with the reason he left Iran. Further in regard to the Appellant's claimed blogging it is submitted that the First-tier Tribunal Judge did not find the Appellant's evidence reliable and found that the claimed raid on the house did not occur.

5. It is on that basis the Appellant's appeal comes before me in the Upper Tribunal to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Gayle. Mr Gayle is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Bates.

Submission/Discussion

6. Mr Gayle relies on the Grounds of Appeal. He submits that the First-tier Tribunal Judge has failed to provide sufficient, or sustainable, reasons for his findings of adverse credibility and that there has also been a failure to consider the Appellant's evidence on the appropriate standard of proof for

asylum claims. He starts by taking me to paragraphs 26 to 31 of the determination where the Tribunal has rejected the Appellant's assertions in relation to his apostasy. He notes that the First-tier Tribunal Judge found that the Appellant's attendance at church was indicative of a belated attempt to bolster a weak asylum claim. He submits that that finding is a material error in the judge's analysis on the basis that the Appellant's attendance at church was not belated. He points out when the Appellant arrived in the UK namely early July 2016 and that he began attending at Wakefield Baptist Church during the same month. Further when dispersed to Derby in August 2016 he and his wife immediately began to attend the community church there. He further submits that the witnesses who gave evidence on the Appellant's behalf provided compelling evidence of the genuineness of his conversion to Christianity and that contrary to the judge's assertions the Appellant had discharged the burden upon him to show that it was reasonably likely he had converted to Christianity. He accepts that in the Appellant's asylum interview the main thrust of the Appellant's basis for an appeal was his blog but emphasises that there was some reliance on his church attendance. He consequently submits that the error of law is finding that the attendance of church was belated then there is clear evidence that the Appellant had been attending church soon after he arrived in the UK. He comments that the finding by the judge at paragraph 30 that the Appellant's witnesses did not know about inconsistencies in the Appellant's asylum and screening interview would be correct but points out that they were not asked about them. He further emphasises that the blog site is controlled by the authorities and the Appellant relies on a simple Google search. He submits there was no need for an expert's report and that the evidence from the Google search is conclusive. He refers to the objective evidence in particular that to be found in the authority of *AB and Others (internet activity – state of evidence) Iran [2015] UKUT 257 (IAC)* and that there is therein reference to blogs being closed down by the authorities. He asked me to find material errors of law and to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing.

7. Mr Bates acknowledges that the Appellant claimed asylum on entry to the UK but points out that his evidence was that he was already a Christian. He argues that there are delays, despite what is said, until August when he attends church. He further points out that there are discrepancies in the Appellant's Home Office interview highlighted at paragraphs 13 to 28 of the Notice of Refusal picked up at paragraphs 25 to 27 of the decision. He accepts that the two witnesses are genuine but that the evidence he found at paragraph 25 was not tested but that the discrepancies with which the judge was addressing are to be found at paragraphs 26 and 27 thereafter. Further the judge was, he submits, entitled to make the findings with regard to the Appellant's wife's testimony at paragraph 28 and whilst he acknowledges that the judge has not given reasons for commenting that he does not think that she is telling the truth he submits that that omission is not material to the overall determination.

8. He turns to the issue with regard to the blogging. The fact there is no website is no reason to say it is hosted from Iran (and indeed in this instant that it is not), it originates in Canada and that there has been no objective evidence produced supporting the risk that might arise from the blogging and that the Google search proves nothing. Either it was designed for Farsi speakers or not but that that does not disprove the Secretary of State's arguments. He submits that the judge was entitled to give appropriate weight to the Respondent's evidence and credibility as set out at paragraphs 37 and 38. He asked me to find that there are no material errors of law and to dismiss the appeal,

9. Mr Gayle in brief response pointed out that the judge has erred in finding that the Appellant did not attend church between July and August when in fact there is clear evidence that he did. Therefore the decision is unsafe on the basis that the Appellant's belief should have been questioned at that time but was not. Further he submits that there has been a failure to give reasons by the judge as to why he rejects the Appellant's wife's testimony and that the Google search is clear that whilst the blog can be hosted in Canada it can still be under the control of the Iranian regime. The fact that there was a blog means that the Appellant would be at risk on return to Iran.

The Law

10. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

11. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

12. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims relevant factors will include the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. In this case the judge has not found that the Appellant's testimony is credible. However the judge has erred in certain aspects in reaching those findings. Firstly the judge has concluded that the delay in the Appellant in attending church taints his claim for asylum based on his religious beliefs. It seems that there is evidence that the judge failed to take into account that the Appellant had attended church in Wakefield prior to August 2016 and had he given due consideration of this factor he might have come to a different finding on the credibility of this aspect.

13. Secondly, the judge has found at paragraph 28 that he did not consider that the Appellant's wife's evidence was true. That is a finding the judge is entitled to make. What he has failed to do is to give his reasons for reaching that conclusion. Mr Bates considers that that is not material albeit that he acknowledges that it is an error. In a case of this nature I consider that it is material bearing in mind that at the end of the day the judge has looked at the Appellant's and his spouse's testimony in the round in making adverse credibility findings are to be made then it is only proper that reasons are given for reaching such conclusions.

14. Thirdly it is submitted that the judge has given inappropriate weight to the Appellant's blog and the fact that the objective evidence states that even though it is hosted in another country it can be under the control of the Iranian regime which might lead to the Appellant being at risk on return to Iran. Whilst the judge has given due consideration to the blog his findings particularly at paragraph 36 and 37 set out his reasons for doing so and why he concludes that the Appellant is not at risk from his alleged blogging activities.

15. This is a case where the Appellant relies on two bases for his asylum claim. Firstly his Christianity and secondly his blogging activities. So far as the aspects relating to Christianity the judge has clearly erred in his assessment of the evidence. He has failed to make findings with regard to how he makes his decision relating to the Appellant's wife's credibility and whilst he has given reasons relating to his findings on the Appellant's blog this is a case that, due to the lack of safety of the findings of credibility, that needs to be looked at as a whole and overall there are therefore findings that are unsafe. Without the errors of law the judge might have made different findings on credibility and on the appeal in general.

16. In such circumstances the correct approach is to find that there are material errors of law in the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier Tribunal for rehearing. I wish to emphasise however that that is not to say that on a complete rehearing of this matter a different judge would not ultimately come to exactly the same conclusions that the First-tier Tribunal Judge has come to. That is a matter for the judge on the rehearing.

Decision and Directions

The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. The following directions are given:

(1) That the matter be remitted to the First-tier Tribunal sitting at Stoke on the first available date 28 days hence with an ELH of three hours.

(2) That none of the findings of fact are to stand.

(3) That the rehearing is to be before any First-tier Tribunal Judge other than Immigration Judge Parker.

(4) That there be leave to either party to file up-to-date subjective and/or objective evidence upon which they intend to rely at least fourteen days prior to the restored hearing.

(5) That a Farsi interpreter do attend the restored hearing.

The First-tier Tribunal Judge made an anonymity direction. No application is made to vary that order and I maintain it.

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.

Signed D N Harris Date: 10th July 2017

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed D N Harris Date: 10th July 2017

Deputy Upper Tribunal Judge D N Harris