



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01107/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham Employment
Centre
On 5 September 2017**

**Decision & Reasons
Promulgated
On 18 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

AN

(ANONYMITY DIRECTION CONTINUED)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Masih, instructed by Bankfield Heath Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision and reasons statement of First-tier Tribunal Judge Butler that was issued on 7 April 2017. Judge Butler decided the appellant was not a refugee from Iran or otherwise in need of international protection.
2. Judge Butler made an anonymity direction because of the nature and content of the appeal. It is appropriate to maintain anonymity and I make the appropriate order at the end of this decision and reasons statement.
3. The grounds on which permission to appeal was granted can be summarised as follows. Judge Butler erred at [60] when he said the appellant had failed to provide an explanation for two inconsistencies

because the appellant had in fact provided explanations in two letters sent to the respondent on 12 December 2016 and 17 January 2017, and reference had been made to those letters in the appellant's witness statement and the skeleton arguments. The failure to take account of the explanations undermines the credibility assessment and conclusions at [61] because Judge Butler did not consider all the evidence provided. If the appellant were found to be credible, then his appeal was bound to have been allowed because the appellant would be a genuine convert to Christianity.

4. Ms Masih expanded on the grounds and pointed out that the explanations provided by the appellant were that question 28 of the interview had confused him and he was not sure what he was being asked to explain. The appellant added further information about his evangelising in Iran to clarify his answer to question 41. Ms Masih reminded me that the written representations were sent to the Home Office the day before the protection claim was refused by the respondent and that this was not a case where the explanation has been provided in response to the reasons for refusal.
5. In addition to these points, Ms Masih argued that Judge Butler failed to take account of the appellant's continued attendance at church, as witnessed by Mr Johnston, who gave evidence at the hearing. The continued attendance was a factor that should have been considered when assessing whether the appellant was a genuine convert.
6. Mr Mills relied on the rule 24 reply dated 7 July 2017. The thrust of that response is that it can be inferred that Judge Butler had regard to the two letters because he referred at [58] to the appellant's witness statement. In the alternative, the respondent argues that any error along the lines described would not affect the outcome because Judge Butler made many other findings against the appellant's credibility.
7. Mr Mills took me to [19] where Judge Butler made specific reference to the appellant's "comments on the interview record and screening interview". This strengthened the respondent's view that Judge Butler had the explanations in mind when assessing credibility. Mr Mills argued that the findings at [58] had to be read in that context; Judge Butler was therein rejecting the explanations given in the two letters. Judge Butler gave adequate reasons for rejecting the explanation, his concerns focusing on the appellant's inability to give an accurate chronology. It was open to Judge Butler to find this undermined the appellant's reliability.
8. Mr Mills accepted that at [59] Judge Butler failed to consider the appellant's explanation about who knew in Iran that he had converted to Christianity. Mr Mills accepted that Judge Butler believed the appellant only provided the explanation after he received the reasons for refusal when in fact he had provided his explanation without sight of the reasons for refusal. Mr Mills submitted that such error was not material because there was a clear inconsistency between the appellant's answers at questions 18, 19, and 41 of the asylum interview. The explanation provided did not directly explain the different accounts, as admitted by Ms Masih, because the explanation merely provided further information.

9. Mr Mills also sought to rely on the finding made by Judge Butler at [64], to the effect that Judge Butler had found the appellant had not evangelised because of a lack of evidence. That finding was unaffected by the claimed errors and would have led to the same outcome. Therefore, any error was immaterial. As to risk on return, Mr Mills said that because the appellant was not a genuine convert, he would not have to lie on return because he would be able to explain to the Iranian authorities that he only claimed to be a convert to secure refugee status.
10. Having considered the decision and reasons statement, the evidence that was provided to Judge Butler and the arguments provided to me, I have decided there is legal error in the decision that requires it to be set aside.
11. The error is simply explained. It is trite law that the Tribunal must demonstrate anxious scrutiny when deciding a protection claim appeal because of the serious consequences that might arise if the wrong decision is made. Anxious scrutiny includes the requirement that a judge examines all the evidence submitted to assess credibility and risk on return. I am satisfied that there are two areas where Judge Butler's decision and reasons appear to overlook relevant evidence that was provided. The first relates to the point conceded by Mr Mills. Judge Butler did not take into consideration the explanations provided by the appellant regarding who knew of his conversion in Iran and his efforts to evangelise. Secondly, I find that Judge Butler has failed to show that he had regard to the appellant's continued attendance at church when assessing whether the appellant was a genuine convert. Judge Butler, instead, focusing on the lack of evidence about what the appellant believed (i.e. the omission of evidence from the pastor who taught the appellant about Christianity) rather than examining his behaviour. It is well established that a judge cannot look into the heart of a person to see what they may or may not believe, but they can examine how a person behaves.
12. I am also satisfied that Judge Butler erred in failing to explore the appellant's answer to question 28 of the asylum interview, relating to the appellant's chronology, I bear in mind that question 28 was clumsy. It reads, "When was the time from when you first met your friend again after the period of absence when you had this discussion with him in the park?" The appellant's answer is puzzling. He says, "6 or 7 months we did not see each other. First after 22nd June 2015." The first part suggests he thought he was answering a question about how long the period was between meetings. In context, the second part suggests he was answering a question about when they first met up again rather than when they first met. Bearing in mind that the question had to be interpreted into Farsi, I find little weight could realistically have been placed on the answer and it would not be reasonable given the lower standard of proof to draw an adverse credibility conclusion from this point alone. Yet that is what Judge Butler has done.
13. Because I find the credibility assessment is fundamentally flawed, I cannot accept that the other findings made regarding evangelising are sound. I do not find they stand alone, as Mr Mills avers.
14. Although I reserved my decision and reasons, I asked the parties what I

should do if I found there was an error. Both indicated that if I found errors in the credibility assessment, then I should set aside the decision in full and remit the appeal to be heard by a different judge in the First-tier Tribunal in accordance with the Senior President's guidance. I agree and make the necessary direction below.

Decision

The appeal is allowed because Judge Butler's decision and reasons statement contains legal errors.

The decision is set aside.

The appeal is remitted for a fresh hearing in the First-tier Tribunal before a judge other than Judge Butler.

No findings are preserved.

Order regarding anonymity

I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the appellant. The appellant can be referred to as "AN".

Signed

Date

15 September 2017

Judge McCarthy
Deputy Judge of the Upper Tribunal