Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/12358/2016**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 9 June 2017	**On 16 June 2017**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

O N G
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Ms J Sane	(Counsel)
For the Respondent:	Ms H Aboni	(Senior Home Office Presenting Officer)

DECISION AND REASONS

1. I have made an anonymity order. Such an order was made by the First-tier Tribunal and, since nothing was said about that at the hearing before me, I have concluded that the status quo ought to be preserved. There may be some risk, if the appellant has given a truthful or partly truthful account of events, that any publicity about him which somehow reaches Iran might create risk or enhance already existing risk to him or, conceivably, to his family who remain in that country.

2. This is the appellant's appeal to the Upper Tribunal, brought with the permission of a judge of the First-tier Tribunal, from a decision of the First-tier Tribunal (Judge Watson hereinafter "the Judge") whereupon she dismissed the appeal against a decision of the Secretary of State of 24 August 2016 refusing to grant international protection.

3. By way of brief background, the appellant is a national of Iran and was born on 13 March 1984. He came to the UK on 28 July 2014 as a Tier 4 Student Migrant under what is usually referred to as the "Points Based System". He claims to have converted to Christianity since

coming to the UK. He asserts that as a consequence of his conversion becoming known his family home in Iran was raided by the authorities. He claimed that if he were to return to Iran he would be treated as an apostate and would be persecuted.

4. The Secretary of State, having interviewed the appellant and having considered his account, disbelieved it. It was not accepted that he had genuinely converted to Christianity and it was not accepted that there had been any raid upon his family home in Iran. Nor was it thought that he would face risk simply on the basis that he would be returning as a failed asylum claimant. In that context it was noted that it appeared he had left Iran legally.

5. The appeal was considered at a hearing of 13 December 2016. Both parties were represented and the appellant gave oral evidence. The Judge went on to produce written reasons for her decision to dismiss the appeal and those are dated 23 December 2016. Those reasons are, most helpfully, clearly expressed and easy to read.

6. At paragraph 16 of the written reasons the Judge recorded an agreement between the parties to the effect that the outcome of the appeal would turn on credibility. As to that, she said this:

> "The issues
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> 16. It was agreed that the issues relate entirely to the appellant's credibility. If I find that his core account of conversion to Christianity is proved to the required standard of proof, his asylum appeal will succeed. The country guidance and objective evidence support this."

7. The Judge then went on to explain why she did not, in fact, believe the appellant's account. She said this:

> "Documentary and Oral Evidence – Analysis
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> 17. The appellant had claimed that his application for asylum was prompted after his family home was raided in Iran. His mother had telephoned to tell him about it. I found his account of this to be improbable. He said that the reason why no one from his home had sent any evidence about the claimed raid was because it was unsafe for them to do so. He elaborated and claimed that his mother would contact him through whats app, skype and telephone but that she would not be able to use email to send a statement. In further cross examination he confirmed that his brother and sister and father lived in the home and they had all been present at the raid. His sister and father lived in the home and they had all been present at the raid. His brother was a student. When asked whether his brother was unable to use the email or Internet to produce evidence about the raid the appellant claimed that his brother, a student, did not have the knowledge to email. I found this not credible. He had described his mother using other means of modern communication and his explanation of the family's inability to use the computer was not credible. The appellant clearly was aware that face book was subject to a filter in Iran and described other means of communication as preferable. I find that his claim that his family home was raided to be false and put forward to bolster an asylum claim that was made shortly before his visa was to expire.
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> 18. I further found his evidence about his church activities to be inconsistent. He had described a different programme of church events in his interview to his oral evidence. I accept that he has attended prayer and church meetings but not to the extent claimed.
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> 19. The Pastor [N] is the pastor of a church group which uses his own home address for correspondence and meets at a community centre as it does not have its own premises. It has no particular processes for assessing whether a person is genuine in beliefs. He attended the Tribunal and has made a statement which is in the bundle. I accept that the Pastor is genuine in his own belief and wishes to believe in the appellant's conversion. However his evidence was not consistent with that of the appellant. The appellant when asked about the last prayer meeting attended stated that it was 3 weeks prior to the hearing. When the pastor was asked the same question as to the last prayer meeting that the appellant had attended he stated that it was last week and when pressed on the point confirmed that he had personally been told that by a Reverend [H] who had taken the meeting. I take from this that the Pastor wished to assist the appellant by saying whatever he

thought would help him in his application and his general good will and wish to believe in the appellant's claims has misled him and I can give his evidence little weight. Further he could give no evidence as to how checks were carried out to ensure that someone is a genuine convert prior to a baptism.

20. I have noted that a number of people from the church attended and I find that they have embraced the appellant and have a wish to assist him. They were asked no questions on attending the Tribunal and I find they are entirely genuine in their belief in the appellant's conversion."

8. Then, and by way of an alternative finding, the Judge said this:

" 22. If I am wrong in my findings of fact that he is not a genuine convert, I find in any event that the authorities are unaware of the appellant's religious interest and would not be interested in him on his return. I do not accept that he has a faith that would require him to convert or preach and by necessity come to the attention of the authorities. As such he is not at risk of persecution or serious harm."

9. An application to the Upper Tribunal followed. The grounds are lengthy but, in a nutshell, it was contended that the Judge had erred in failing to adequately reason her adverse credibility finding and had not had proper regard to applicable case law and relevant background country material with respect to the alternative finding. The Judge granting permission said this:

" 2. The grounds assert that the judge's decision is fatally flawed by a failure to give adequate reasons for findings on credibility, flawed reasoning and a failure properly and adequately to consider the evidence before the tribunal.

3. The grounds disclose arguable errors of law capable of affecting the outcome."

10. Permission having been granted, the matter came before the Upper Tribunal (before me) for a consideration as to whether the Judge had erred in law and, if so, what should flow from that. Representation at that hearing was as indicated above and I am grateful to each representative.

11. Both representatives took the view that the decision of the Judge was flawed with respect to the alternative finding because it appeared to be inconsistent with the apparent acceptance by the judge that the appeal turned on credibility. However, Ms Aboni argued that the adverse credibility finding itself was sound such that whatever might be said of the alternative finding did not matter. She said that the Judge had made findings open to her and had given adequate reasons for those findings. She stressed that the Secretary of State's "reasons for refusal letter" had contained an extensive list of reasons for rejecting the claimed raid upon the family home. Ms Sane contended that the Judge had disbelieved the whole of the account simply because the raid had been disbelieved. That represented an incomplete assessment. Further, she had not engaged with the consistent evidence of the appellant and a witness from whom she heard (a Pastor I shall simply refer to as N) regarding the nature and the detail of the claimed conversion.

12. It is right to say that a judge does not have to refer to each and every aspect of the evidence when explaining a decision. It is also right that the reasons given for a decision only have to be adequate. I remind myself that grounds which do not go beyond mere disagreement with the findings and conclusions do no demonstrate error of law.

13. Despite the above, I have concluded that the Judge did err in law with respect to her adverse credibility assessment. In that context, she did have quite extensive written evidence from the appellant and from N regarding the claimed conversion. That, of course, would have been supplemented by oral evidence. Whilst it is perhaps marginal, I have concluded that what she had to say does not show that she had adequately engaged with the thrust and detail of that evidence. Further and in my judgment more importantly, it does appear from what the Judge had to say at paragraph 19 of her written reasons to the effect (on my reading) that she thought N had,

effectively, decided not to tell her the truth because of his wish to assist the appellant has been properly reasoned. The Judge put it in a kindly manner but the words "I take from this that the Pastor wished to assist the appellant by saying whatever he thought would help him in his application" do seem to indicate that she had taken the view he was lying to her. That was a conclusion of significance which, in my judgment, required a somewhat more detailed explanation than was given. I would also conclude that the inconsistency the Judge had identified at paragraph 18 of her written reasons was inadequately explained.

14. I take Ms Aboni's point that there were other credibility concerns raised in the reasons for refusal letter. However, I can only base my reasoning upon the Judge's own concerns with respect to credibility rather than those expressed at an earlier stage on behalf of the Secretary of State.

15. It might well be the case that the Judge would not have had to have done very much more than she did to make her explanation as to credibility sufficiently robust to withstand a "reasons challenge" which is what this is. However, in light of the above I have concluded that she did err in law.

16. The Judge's decision is not saved by her alternative finding because, whilst she was not bound by any agreement between the representatives that the appeal turned on credibility, it appeared from what she said at paragraph 16 that she accepted that that was the case too and, in any event, given the party's view that it did, it would have been incumbent upon her to have explained why she was differing from that if she was to dismiss the appeal on alternative grounds.

17. When I informed the representatives that I had decided to set aside the Judge's decision, both indicated that they preferred remittal as opposed to my remaking the decision myself. In any event, Ms Sane was not in a position to proceed by way of what would have been a complete rehearing before me, given that N had not been warned that his evidence might be required. That, perhaps, represents something of a failing on behalf of those advising the appellant and instructing Ms Sane given that directions did make it clear that remaking might take place at the same hearing. Nevertheless, I am required to do what is fair and, in all the circumstances, I have concluded that fairness dictates I should remit to the First-tier Tribunal as an expert fact-finding body given that matters will have to be heard entirely afresh.

Decision

The decision of the First-tier Tribunal involved the making of an error of law. That decision is set aside.

The appeal is remitted for a complete rehearing.

Signed: Date: 15 June 2017

Upper Tribunal Judge M R Hemingway

Anonymity

I grant the appellant anonymity pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of this case shall identify him or any member of his family. Any breach may result in contempt of court proceedings.

Signed: Date: 15 June 2017

Upper Tribunal M R Hemingway

TO THE RESPONDENT
FEE AWARD

I make no fee award

Signed: Date: 15 June 2017

Upper Tribunal Judge M R Hemingway