Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12881/2016

THE IMMIGRATION ACTS

Heard at Birmingham **Decision & Reasons Promulgated**
On 4 September 2017 **On 5 September 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

DJA
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Ms Masih, instructed by Braitch RB Solicitors
For the respondent: Mrs H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Butler promulgated 30.5.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 7.11.16, to refuse his protection claim. The Judge heard the appeal on 12.4.17.

2. First-tier Tribunal Judge Gillespie granted permission to appeal on 22.6.17, stating that the "points raised in the proposed grounds of onward appeal are all fairly arguable. They disclose arguable errors of law which, if established, would arguably be material to the outcome. Permission is granted."

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3. Thus the matter came before me on 4.9.17 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.

5. I have carefully read and considered both the comprehensive and otherwise careful decision of the First-tier Tribunal and the grounds of application for permission to appeal.

6. I am not satisfied that there is any material error in relation to the first ground at [4(i)] of the grounds of application for permission to appeal. The judge concluded at [66] of the decision that the appellant and his wife were inconsistent as to when the appellant lost his Muslim faith. In evidence he told the judge he lost his faith whilst in Iran and told his family. However, his wife's evidence was that he did not give up his Muslim faith in Iran, that only happened in the UK. The ground attempts to distinguish a loss of faith from a cessation of Muslim religious practice. Contrary to the assertion in the grounds that ceasing Islamic practice in Iran would have been dangerous, country background information is to the effect that many Iranians are non-practising in the Muslim faith. I also disagree with the submission that it is clear from the evidence cited by the judge at [32] and [37] that the appellant continued to practice the Islamic faith in Iran. That is not clear at all. I am satisfied that it was open to the judge to reach the conclusion as to inconsistency on this issue.

7. At [69] little weight is attached to a letter from Kia Hadeghi, in part because it is said that the person's position is unknown. Whilst, the author identifies himself as an assistant to Reverend Sotoudeh, the judge was entitled to conclude that there was no evidence that the person had the authority to write such a letter. Ms Masih sought to rely on a similar from Rev Sotoudeh at A100 of the appellant's bundle, but the two letterheads are different. I am satisfied the judge was entitled to attach little weight to this letter.

8. I am not persuaded by the argument in grounds [4(viii)] that the appellant will be at risk because, following SSH & HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 00308 (IAC), he will be questioned on return and cannot be expected to lie. The grounds assert that merely because he had become a member of a Christian church he will be obliged to report that to the authorities. As the judge found that his Christian conversion was not genuine, there is no reason for the appellant to disclose anything to the contrary. On the argument of Ms Masih, every Iranian who joins a Christian church will, by that reason alone, be entitled to international protection, whether or not their alleged conversion is genuine or not; that cannot be right.

9. However, the other grounds of appeal highlight a number of other factual errors in the decision which I consider to be material to the outcome of the appeal.

10. The grounds at [4(ii)] assert that at [67] the judge did not accept that the appellant could have attended two churches simultaneously. Whilst it was the appellant's case that did do just that, so that attendance at both overlapped for a period of time, one in Wolverhampton and the other in Birmingham, the essence of the judge's conclusion at [67] is that it was not accepted that the appellant would or could have attended both services on the same day. The judge cited the appellant's answers to questions in interview, but these did not show an inconsistency. The judge has given no other and no clear rational for dismissing the claimed double attendance. It would have been open to the judge to reach a conclusion as to *why* he did not accept the appellant attended two different churches on the same day, but the final sentence of [67] is to the effect that the judge did not accept that the appellant and his wife and daughter "*could*" attend both churches simultaneously. Clearly, they couldn't be in two different places at the same time, but as one of the services was in the morning and the other in the afternoon, it was physically possible to attend both church services and the documentary evidence supported the fact that they did so.

11. A further ground of appeal is that at [68] the judge attached little weight to a letter from pastor Ahmadifar, in part because the judge stated that the appellant did not mention him in his interview or witness statements. That is factually incorrect, as he is mentioned in the interview at Q53, witness statement, and was referred to in the RFR. However, the appellant referred to him as Sherpoor and explained in his witness statement of 1.9.14 at [12], where that this is the same person as Ahmadifar.

12. At [70] the judge said there was no evidence as to the progress of the appellant's faith from the Church of the Light in Birmingham, when a letter setting out the progress made is at A100. Similarly, at [71] the judge said there was no evidence from the appellant's cousin or Reza as to his attendance at the Elim Church in Liverpool, but such letters appear at A97 and A99 of the bundle.

13. The judge's conclusions at [73] as to the evidence of Mr Coates-Smith are undermined by the failure to provide cogent reasoning as to why the claim that the appellant's interest in Christianity began just before his first appeal was dismissed is not credible. It is also contradicted by [75] where the judge suggests that the path to conversion began after the dismissal of his first appeal.

14. Cumulatively, these material errors of fact and law undermine the central credibility issue as to the appellant's Christian conversion, so that it would be unsafe and unfair to allow the decision to stand.

Remittal

15. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the facts are unclear on a crucial issue at the heart of an appeal, as they are in this case, effectively there has not been a valid determination of those issues. The errors of the First-tier Tribunal vitiate all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
16. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusions:

17. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.

Signed

Deputy Upper Tribunal Judge Pickup

Dated

Deputy Upper Tribunal Judge Pickup

Consequential Directions

18. The appeal is remitted to the First-tier Tribunal sitting at Birmingham;
19. The appeal is to be decided afresh with no findings of fact preserved;

20. The ELH is 3 hours and the appellant indicates that 4 witnesses will be called;
21. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Butler;
22. An interpreter in Farsi will be required;
23. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal is unlikely to accept materials submitted on the day of the forthcoming appeal hearing in the First-tier Tribunal;

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an anonymity order. Given the circumstances, I continue the anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup

Dated