



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13892/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 04 September 2017**

**Decision and Reasons
Promulgated
On 07 September 2017**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**M M
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms M Thirumaney of Shervin Solicitors
For the respondent: Ms Z. Ahmad, Senior Home Office Presenting
Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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 his family. This direction applies both to the

appellant and to the respondent.

DECISION AND REASONS

1. The appellant appealed against the respondent's decision dated 01 December 2016 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge M.K.P. Davies ("the judge") dismissed the appeal in a decision promulgated on 13 February 2017 because the judge was not satisfied that the appellant had given a credible account or that he had genuinely converted to Christianity. The appellant appeals against the decision on the following grounds:
 - (i) The judge failed to give adequate reasons to explain why the respondent's position was preferred, as set out in the decision letter, and failed to make any findings to explain why the appellant's response was rejected.
 - (ii) The judge failed to give adequate consideration to evidence that supported the appellant's claim, including the detailed account given in interview, and failed to give adequate weight to the supporting evidence given by witnesses from his church.
 - (iii) The judge unfairly made negative findings on a credibility issue that was not raised in the decision letter and was not put to the appellant to answer at the hearing.
 - (iv) The judge gave undue weight to his failure to claim asylum in a safe third country under section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("the 2004 Act").

Decision and reasons

3. Having considered the First-tier Tribunal decision, the grounds of appeal and the oral submissions made by both parties at the hearing I find that the First-tier Tribunal decision involved the making of an error on a point of law.
4. Some of the complaints made about the decision are unfounded. Many of the findings were open to the judge to make. The judge was unarguably entitled, and indeed obliged, to take into account any matters outlined in section 8 of the 2004 Act. It was open to the judge to assess the plausibility of certain aspects of the appellant's account. The matters that were not put to the appellant were not so central to create unfairness. The judge gave adequate reasons to explain why less weight was placed on the evidence given by the two church witnesses.
5. However, having read the decision with some care, I find that there is some force in the appellant's first two grounds of appeal. It is acknowledged that a judge is entitled to rely on the reasons given in the respondent's decision letter, but it is still necessary for a decision maker to explain why that evidence is preferred to other evidence produced in

support of the appeal. The Tribunal in *MK (duty to give reasons)* [2013] UKUT 641 reiterated the basic principle that a judge should give adequate reasons to explain his or her core findings.

6. In this case the judge took into account the “consistency of the Appellant’s overall account” in interview, his witness statement and in evidence at the hearing. The judge was not satisfied that the appellant had given a credible explanation as to why he chose to convert from Islam to Christianity [33] for the reasons given in paragraphs 15 and 17 of the decision letter. Again, the judge relied on the reasoning in the decision letter at paragraphs 24-30, which asserted that the appellant’s account of the Christian religion was “vague and lacking in detail” [38].
7. First, there was no analysis of whether the assertions made in the decision letter were correct and little explanation was provided as to why they should be given weight. On the face of it the appellant had been able to provide a fairly detailed response to the questions put to him in interview. Second, the decision letter itself acknowledged that the appellant had shown some knowledge of the Christian religion [24-25]. Whilst the letter went on to state that the appellant had been inaccurate in some aspects of his account of the nativity story and the Pentecost, no assessment was made by the judge as to whether the appellant’s knowledge was nevertheless broadly consistent with someone who had recently converted to the religion. Third, although the judge noted that the appellant had responded to the reasons for refusal in his witness statement [38], there is no assessment of that evidence and no reasons are given for preferring the respondent’s decision letter.
8. The failure of the First-tier Tribunal to provide adequate reasons for rejecting core aspects of the claim, or to consider any matters that might have supported the appellant’s account, amounts to an error of law. It is possible that the negative findings made in relation to the appellant’s account of events in Iran might have impacted on the judge’s overall view of the evidence relating to his attendance at church in the UK.
9. For the reasons given above I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The parties agreed that if an error was found that the appropriate course of action would be to remit the appeal to the First-tier Tribunal for a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed



Upper Tribunal Judge Canavan
2017

Date: 06 September