



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01642/2018

THE IMMIGRATION ACTS

Heard at Field House
On 20 June 2018

Decision & Reasons Promulgated
On 02 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[K S]

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer

For the Respondent: Mr T Hodson of Elder Rahimi Solicitors

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Wilson promulgated on 27 March 2018 in which he allowed the appeal of [KS] on protection grounds against a decision of the Secretary of State for the Home Department dated 19 January 2018 refusing [KS] asylum in the United Kingdom.
2. Although before me the Secretary of State for the Home Department is the appellant and [KS] is the respondent, for the sake of consistency with the proceedings before the

First-tier Tribunal I shall hereafter refer to [KS] as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a national of Iran. The Respondent has recorded his date of birth as 1 January 1987; the Appellant has indicated that this is an error, and he was born on 10 May 1986. For present purposes nothing turns on the date of the Appellant's birth.
4. The Appellant claims to have left Iran in September 2014 and to have made his way to the United Kingdom via Turkey, Greece, Bulgaria, France, Austria and Germany, arriving on 18 November 2015. He claimed asylum upon arrival, and a screening interview was conducted on the same date.
5. For reasons that are not entirely clear the Appellant's asylum application was not processed until 2017. A possible reason may relate to the Appellant's arrest and conviction on offences of possession of drugs; the exact nature of the crimes with which the Appellant was charged, and to which he pleaded guilty, is not clear on the available documents.
6. Be that as it may, on 5 September 2017, at a time when the Appellant was in custody, he again went through a screening interview procedure, and a substantive asylum interview was then conducted on 25 September 2017.
7. The Appellant claimed asylum on the basis that he was at risk of persecution in Iran on religious grounds as a person having converted from Islam to Christianity.
8. The Respondent refused the application for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 19 January 2018.
9. The Appellant appealed to the Immigration and Asylum Chamber.
10. The Appellant's appeal was allowed for reasons set out in the decision of First-tier Tribunal Judge Wilson.
11. The Respondent sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Lambert on 27 April 2018. In granting permission to appeal Judge Lambert considered that it was arguable that the Judge had fallen into

error in that the decision *“lacks both cogency and... adequate reasoning - both as to the credibility of the core aspect of the claim and as to risk on return”*.

12. I have reached the conclusion that the Decision does indeed contain material errors of law such that it is to be set aside.
13. In reaching my conclusion I have had regard in particular to the following matters in respect of what appears to be a significant discrepancy in the core of the Appellant's case.

(i) At the initial screening interview on 18 November 2015 the Appellant is recorded as having stated the following:

“My father paid money to an agent at the start of the journey. I then paid the other lorry drivers with [there is a symbol which could be ‘€’ or ‘£’ but clearly denotes money] my dad gave me.” (Respondent's bundle, A5).

(ii) In the second screening interview, conducted almost two years later on 5 September 2017, the Appellant said something approximately similar at section 3.1. In response to the question at box 3.1 - ‘Why have you come to the UK?’, it is recorded *“England was a safe country - father paid money to somebody to bring him here”* (Respondent's bundle, C4). A similar response is recorded at section 3.3 pursuant to a suggestion that the Appellant might have been trafficked: *“when asked how he thinks he was trafficked - he was not forced but stated that his father paid someone to smuggle him into the UK.”*

(iii) I take into account that whilst the first screening interview was conducted at the time of the Appellant's arrival in the UK - and necessarily a degree of caution must be taken with regard to answers given at such a time when an individual may yet be suspicious of authority, and/or in circumstances where an individual may have recently undergone an arduous journey - the subsequent screening interview took place in no such circumstances. The Appellant had been relatively safe in the United Kingdom for a considerable period of time and had had plenty of time to gather his thoughts with regard to the basis of his asylum claim.

(iv) At his substantive asylum interview the Appellant was asked further about such matters. Questions 17-19 are in the following terms:

“17. Q: In your asylum screening you say that your father paid someone to bring you to the UK, can you confirm this is what happened?”

A: *I lied to my dad really, I told him to give money to one of his friends and I never returned it to him. That's how I got the money.*

18. Q: *What did you tell your father in order for him to give you the money?*

A: *I pretended that the cheque was some sort of a guarantee but in fact I cashed it. I took a little bit of the money and gave the rest to my dad's friend and just left.*

19. Q: *So did you tell your father that you was leaving Iran?*

A: *No I didn't tell him."*

The Appellant then went on to state that it was his father's friend who had arranged for him to leave Iran and he paid his father's friend 40 million tomans.

(v) It may be seen that there is a clear discrepancy between what is said in the two screening interviews - to the effect that the Appellant's father paid someone to smuggle the Appellant into the United Kingdom - and what is said in the substantive interview - to the effect that the Appellant duped his father out of money which he then gave to his father's friend who in turn engaged an agent to assist the Appellant in his journey from Iran to the UK. This discrepancy is identified in the RFRL (see paragraph 35) and relied upon adversely by the Respondent in the evaluation of the Appellant's overall credibility.

(vi) The First-tier Tribunal Judge was also alert to this circumstance. At paragraph 10 the following is stated:

"The discrepancy as to payment is significant as it goes to why the appellant left Iran...."

(vii) The Judge again underscores the potential significance of the unsatisfactory nature of the Appellant's testimony in this regard at paragraph 11:

"The impression that the appellant through his father paid for a trip to the UK building the case of an asylum claim on his way as part of his package naturally arises from that history. Whether or not the whole claim is a false manifestation of a religious conversion has to be considered."

The references to 'part of a package' and 'building a claim on his way' also encompass the circumstance of the Appellant's claim to have been baptised in Turkey by a Dutch church - a matter that he was relying upon at the point of arrival as evidence of his conversion to Christianity.

14. The Judge gave consideration to aspects of the Appellant's evidence that were provided to support his claim to have converted to Christianity. In particular the Appellant relied on three letters from various church officials to reinforce the notion that he was a genuine convert to Christianity. The Judge takes all of these matters forward into paragraph 14 of the Decision where a conclusion is reached in respect of the Appellant's conversion. Paragraph 14 is in these terms:

"Overall it is a claim for asylum where there are strong consistent elements setting out his religious conversion originating from a position of sexual abuse by his Islamic teacher. His manifestation of the Christian faith is supported by three external suitably qualified religious leaders. These are all matters that clearly go to establishing his case. Against that there is them both [sic.] discrepancy as to how he was able to fund journey, lack of detail originally given, a lack of detailed knowledge of the Christian faith some two years after arrival in the United Kingdom and a vagueness generally as to dates and the strange matter of a substantial period it is asserted now spent in Turkey during which he was baptised but was then able to meet up with the agent and resume the journey. An assessment on an ordinary burden of proof (balance of probabilities) would fail but as said I have to determine the matter on the lower standard of proof. On that basis noting positive aspects which relate to the core of his case in Christian conversion which has now been maintained for a significant period of time is sufficient for me to find in his favour he is a Christian convert."

15. It is to be noted that the Judge says nothing specific in paragraph 14 as to how he resolved the discrepancy that I have identified above - and which the Judge himself identified as a significant aspect of the overall case. However, some further mention of the funding of the journey is made in the following paragraph, where the Judge goes on to consider the risk on return. Paragraph 15 starts in the following way:

"What is not clear is what would happen to him on his return to Iran. If his current account of stealing substantial sum of money from his father is correct and there is sufficient detail given in interview that lends this element a certain plausibility. Given that they were hostile to his increasing interest in the Christian faith I accept that he would be denounced as an apostate by his family and hence all the difficulties that apostates face in Iran. I have carefully considered this aspect of his claim and whilst noting the marked divergence when he originally arrived in the United Kingdom I do accept this aspect of his claim."

16. In my judgment this 'reasoning' is problematic and does not constitute the provision of adequate reasons for reaching the conclusion expressed by the Judge.
17. To say, as the Judge does, that one version of two divergent accounts is plausible is not to deny the plausibility of the other version. Certainly the Judge does not suggest that it is anything other than plausible that the Appellant's father paid an agent. In itself the recognition of 'a certain plausibility' in one version does not resolve the issue of

the discrepancy, or resolve the issue of the potential damage to credibility arising from a discrepancy. For the Judge simply to indicate, as in effect he does, that having considered the matter he accepts one version, is to fail to offer the reader a reasoned explanation such that he or she might understand how the Judge has reconciled the discrepancy and reached a conclusion as to one version of events rather than another.

18. Further, in my judgement it is not possible safely to divorce the error of reasoning at paragraph 15 from the evaluation in respect of credibility at paragraph 14. In those circumstances I find material error both in respect of the evaluation of the Appellant's credibility with regard to his conversion to Christianity, and with regard to risk on return.
19. In reaching my decision I have considered Mr Hodson's submissions on paragraph 14 to the effect that the Judge was alert to the nature of the discrepancy, correctly directed himself as to the standard of proof, and clearly found that the problematic aspects of the Appellant's narrative and presentation of his claim did not, on the lower standard of proof, outweigh the positive features of the supporting testimony. Even if I were persuaded – which I am not – that the finding on conversion is sustainable, this submission does not begin to persuade me that the evaluation of risk on return – and in particular the likelihood of being denounced by his family as an apostate – is sustainably reasoned. Whilst the discrepancy as to who funded the Appellant's journey *might* be marginalised when evaluating his claimed conversion to Christianity, it is more central to a claim to be at risk from his family and therefore requires clear and reasoned analysis.
20. The nature of the error strikes, in my judgement, at the core of the Appellant's case both in respect of his claim to be a genuine convert and his claim to be at risk on return. Accordingly the decision will require to be remade after a new hearing before the First-tier Tribunal with all issues at large.
21. As an aside, I note that in granting permission to appeal Judge Lambert expressed some concern as to the "*poor wording*" of aspects of the Decision. The wording of the Decision was not specifically raised as a ground of appeal by the Secretary of State. Be that as it may, it is readily apparent that there are aspects of the decision which do not read well: this may be seen in the short passages quoted above – and is not confined to those passages. It seems to me likely that this arises in part by reason of the use of voice recognition software which 'misunderstands' or 'mishears' dictation. For example: at paragraph 4 a quotation from the screening interview has been mistyped, "*my father paid management agent at the start of the journey*", instead of 'my father paid money to an agent at the start of the journey'; at paragraph 8 'Iran' appears as 'the run'. There are also errors of syntax and punctuation, which are common in the first draft of dictated decisions. It is possible for a careful and informed reader to 'navigate'

around such matters, but nonetheless the concern appropriately raised in the grant of permission to appeal does suggest that something more careful by way of proof reading is required. (I say this fully cognisant that, fate tempted, there will no doubt now be something herein that I overlook in proof reading resulting in a lack of cogency.)

22. It is not necessary for me to make any specific directions for future conduct of the appeal before the First-tier Tribunal. The Appellant, through his experienced and able representatives, will be fully aware of the need to file any further evidence upon which he may wish to rely in good time ahead of the next hearing.

Notice of Decision

23. The decision of the First-tier Tribunal contained a material error of law. The decision is set aside.
24. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Wilson with all issues at large.
25. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **29 July 2018**

Deputy Upper Tribunal Judge I A Lewis