



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/02701/2017

THE IMMIGRATION ACTS

**Heard at: Columbus House, Decision & Reasons Promulgated
Newport
On: 15 February 2018 On: 23 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

ASH

(anonymity direction made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr C Howells, Counsel instructed by NLS Solicitors
For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Fowell in which he dismissed the appeal of the Appellant, a citizen of Iran, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 3 March 2017. The Appellant exercised her right of appeal to the First-tier Tribunal.

This is the appeal which came before Judge Fowell on 1 June 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge O'Garro on 21 September 2017 in the following terms

"The grounds of appeal assert that the judge did not consider the appellant's evidence properly. That he misconstrued the appellant's evidence relating to the detention and harassment of the appellant's family in Iran which affected his assessment of the appellant's credibility.

It is arguable that there was some misunderstanding of the appellant's evidence by the judge which affected his assessment of the appellant's credibility and his conclusion that the appellant is not a genuine convert."

3. By a rule 24 response dated 8 November 2017 the Respondent opposed the appeal arguing that the Judge gave adequate reasons for rejecting the appellant's account of events in Iran and for finding that she is not a genuine Christian convert.
4. At the hearing before me Mr Richards appeared to represent the Secretary of State and Mr Howells represented the Appellant. At the outset of the hearing Mr Richards said that, having spoken to Mr Howells, he agreed that the Judge erred in his understanding of the Appellant's evidence. It was clear from the decision that the Judge was under the impression that the Appellant's parents remained in detention in Iran and that this was a significant factor in his adverse credibility finding whereas it was clear from the witness statement and the Appellant's oral evidence that she had not suggested that her parents remained in detention.
5. I gave an oral decision announcing that the appeal would be allowed, and I now give my written reasons.

Background

6. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Iran born on 21 September 1986. She left Iran on 12 September 2016 travelling via Turkey to the United Kingdom arriving on 20 September 2016 and claiming asylum the same day. The basis of her claim was that she was born Muslim but had converted to Christianity in Iran and had fled following adverse interest from the authorities and had continued her practice of the Christian faith in the United Kingdom. The Respondent did not accept that she was a genuine convert.

The Appeal hearing

7. At the appeal hearing on 1 June 2017 the only issue was whether the Appellant's conversion was genuine. In dismissing the appeal, the Judge based his reasoning on the Appellant's account of events in Iran finding (at paragraph 36)

"the fact that the family are still in detention is particularly surprising"

and referring to the background material (at paragraph 37) that

"there is no real suggestion that family members of recent converts would be of interest, let alone that they might be detained for extended periods ... What is suggested by the appellant is therefore completely at odds with this background information ..."

and (at paragraph 43)

"For the avoidance of doubt however it is the prolonged detention of her family members that I regard as particularly implausible."

Error of Law

8. As the grounds point out the Appellant, in her witness statement, stated that her family have been arrested and harassed on several occasions because the authorities are looking for her. The representatives agreed that in her oral evidence to the Tribunal the Appellant did not demur from this. The Judge's record of proceedings shows only one question in cross examination that is relevant

"You say that Ettela'at are interested in your family and keep calling at the house and have taken your family away"

to which the Appellant answers

"yes".

There is no reference to this in the Respondent's submissions and it appears that the Respondent's representative was only asking the Appellant to confirm what was said in her witness statement. In considering his notes the Judge appears to have taken the Appellant's single word answer to this question as a change in her evidence suggesting that her family remained in detention. Neither representatives suggested that this was a correct interpretation.

9. In my judgment it is clear that the Judge misunderstood or misinterpreted the Appellant's evidence and it is equally clear that this single element was held heavily against the Appellant's overall credibility. As is apparent from paragraph 7 above the

Judge felt so strongly that this point mitigated against her overall credibility that he mentioned it three times concluding that it was this element that he found particularly implausible. Bearing in mind that it was the Judge's findings relating to the Appellant's account of events in Iran that caused him to dismiss the appeal I find that this amounts to an error of fact constituting a material error of law.

Summary

- 10. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the Appellant's appeal.
- 11. The error of law identified goes to the heart of the credibility finding made and, in these circumstances, I remit the matter to the First-tier Tribunal for hearing de novo.

Signed:

Date: 15 February 2018

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J F W Phillips
Deputy Judge of the Upper Tribunal