



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

Appeal Number: PA/05778/2017

THE IMMIGRATION ACTS

**Heard at North Shields
On 9th January 2018**

**Decision & Reasons Promulgated
On 31st January 2018**

Before

Upper Tribunal Judge Chalkley

Between

**MNK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellant: Ms M Cleghorn, Counsel instructed by Collinwood
Immigration Solicitors*

For the Respondent: Mr G Harrison, a Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Iran, born on [] 1979. He is known by an alias as well as his other name quoted above. He arrived in the United Kingdom on 17th March 2009 and claimed asylum at the port on the ground that he was a member of a particular social group, namely an adulterer.
2. He made a second claim for asylum on 5th April 2013, based on his claimed political activities in the United Kingdom, together with his mental health issues and this was similarly refused. The appellant then made a third

application for asylum on 16th January 2017, based on his claim to have converted to Christianity from Islam. The respondent refused that claim in a Reasons for Refusal Letter dated 26th May 2017, for reasons set out in his Reasons for Refusal Letter of that day.

3. The appellant appealed, and his appeal was heard by the First-tier Tribunal at North Shields on 14th July, 2017 by First-tier Tribunal Judge Arullendran. The judge properly applied *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* * UKIAT 00702 and noted the determinations of First-tier Tribunal Judges Zucker, and Manchester, in making his first finding. The judge said that he was satisfied that the appellant first attended church after he knew that Judge Manchester had rejected his fictitious account of his *sur place* political activities and that this was his trigger for his decision to do so. The judge went on to say, "*he did so in my judgment in a deliberate attempt to construct a new sur place claim*". That is contained at paragraph 67 of the judge's determination. The judge went on to make other adverse credibility findings and then dismissed the appeal.
4. The appellant challenged the determination on the basis that the fact the evidence before the judge showed that the appellant had attended church long before 2016, when First-tier Tribunal Judge Manchester heard the appellant's second asylum claim. Today, Mr Harrison accepted before me that there was a factual error at paragraph 67, but suggested that it really did not affect the reasons given by the judge. It was surprising that, despite two earlier asylum claims, the appellant had not previously claimed that his conversion to Christianity was a reason why he needed to claim international protection.
5. I have concluded that the determination cannot stand and I set it aside. There is clearly an error of fact at paragraph 67 of this determination and it is the first of several adverse findings made by the judge. The judge actually says in paragraph 67 that he believed it was a deliberate attempt to construct a new *sur place* claim and it was, having said that, that the judge went on to make his other adverse findings such that they were tainted by what he said at paragraph 67. Were I to adjourn the proceedings and hear the appeal myself in the Upper Tribunal there would inevitably be lengthy delays. Given that this appellant entered the United Kingdom in 2009 it is important that further delays should be avoided.
6. In the interests of justice, therefore, I remit this appeal to the First-tier Tribunal and direct that it should be heard by a judge other than First-tier Tribunal Judges Zucker, Manchester and Arullendran. Three hours should be allowed for the hearing of the appeal and a Farsi interpreter should be booked.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Richard Chalkley
January 2018.
Upper Tribunal Judge Chalkley

Date 30th