Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/06416/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 April 2018	**On 03 May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

KY
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. T. Hodson, Elder Rahimi Solicitors
For the Respondent: Mr. D. Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by KY against the decision of First-tier Tribunal Judge Lucas, promulgated on 23 August 2017, in which he dismissed KY's appeal against the Secretary of State's decision to refuse a grant of asylum.

2. I have made an anonymity direction, given that this is an asylum appeal.

3. Permission to appeal was granted as follows:

> "It is arguable that the Judge failed to consider the Appellant's witness statement in which he gives details of his religious activities in Iran, explains his tattoo and gives an account of how he left Iran. It is arguable

that the Judge misunderstands the Appellant's evidence at paragraphs 29 and 30 and his conclusion that the Appellant's account was vague and lacking in detail was arguably irrational given the contents of the Appellant's witness statement. The grounds are arguable."

4. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Error of law

5. I have carefully considered the grounds of appeal and the decision, together with the witness statement of the Appellant. I find that the grounds are made out with reference to the treatment of the witness statement and the Appellant's evidence as set out there.

6. At [29] the Judge states:

"The Appellant's account of his religious activities in Iran is vague and lacking in any real detail. Given the lack of any general evidence relating to his circumstances there, it is not accepted that his uncle had any significant role in his religious or other life there. Even if the account were accurate, the simple discovery of a bible by him would and could not have lead to the conclusion that the Appellant was a Christian convert who attended a house church on at least ten occasions. This is no more likely than the association of him having a tattoo with his alleged Christian conversion. It may well be that the Appellant's uncle – if he did have any role in the Appellant's life – was simply an inappropriately violent individual. That is unfortunate for the Appellant but does not lead to the conclusion that there is a general risk for him upon return to Iran."

7. I have considered the Appellant's witness statement. At [15] to [23] he describes how he was introduced to Christianity, his friendship with K, his attendance at the house church, the gift of the bible, and his feelings about Christianity. It is not "vague", and it does not lack detail. For example, he explains how and where he met K in order to be driven to the house church [18] to [20], he gives the exact dates of his first two attendances at the house church [18], [19], and he gives the name of the pastor [18]. He describes how Christianity makes him feel [16], [21], [23]. There is no reference to this evidence in the decision.

8. It is further clear that the Judge has not taken into account the witness statement when he states at [27] "he remains in contact with his mother". At [28] of his statement the Appellant says:

"Since leaving Iran I have been in touch with my mother only once. This happened before my main asylum interview. I telephoned her at home and we spoke for a short time. She told me not to come back and that I was in danger from my uncle. She told me not to call her again and I have respected her wishes."

9. I find that the Judge is wrong therefore to state that the Appellant is in contact with his mother. He has not referred to the evidence in the witness statement, not event to state that he rejects it.

10. I find that, as set out in ground 2, the Judge has failed to take into account the totality of the Appellant's evidence. He has failed properly to consider his witness statement and has made adverse findings as a result.

11. In relation to ground 3, errors of fact and misunderstandings, the witness statement is again relevant. In relation to the tattoo, the Judge states that there is an "association of him having a tattoo with his alleged Christian conversion" [29]. However, this is not the Appellant's case, as can be seen from his description of the tattoo at [21] of his statement. "I had a tattoo made in around Azar 1394 [November 2015]. The tattoo said "ANA" which means "mother" in Azeri." First, the tattoo does not have any Christian significance. Secondly, he got the tattoo in November 2015, and did not even discuss Christianity with K until June 2016 [15] of his witness statement. The Judge has associated the tattoo with the Appellant's conversion, when there is no connection, as is clear from reading the witness statement.

12. At [30] the Judge refers to the Appellant's account of leaving Iran. He states:

    "The Appellant's account of how he left Iran lacks credibility. After being attacked by his uncle, he says, he then travelled to his friend's house and thereafter to another town, where, by chance, he was able to locate a friend of his fathers who arranged for him to leave Iran. This is an unlikely scenario."

13. At [25] of his witness statement he states:

    "My mother then told K's father that I should go to Orumiyah where my father had a friend called AK whom my father had known a long time. He had kept in touch with us after my father had passed away but my uncle did not know him."

14. At [26] he describes how he travelled to Orumiyah and went to meet AK. There was therefore no chance involved in the Appellant locating a friend of his father. The Judge has erred in this finding. Again, he has made no reference to the Appellant's evidence set out in the statement, not even to state that he rejects it.

15. I find that the Judge has made material errors in his consideration of the Appellant's evidence, stemming from his failure properly to consider the witness statement.

16. Further, in relation to the Judge's treatment of the evidence, I find that he has erred in his failure to deal adequately with the evidence from the Appellant's church, specifically the evidence of Dr. B, the Dorodian witness. At [35] he states:

"None of the documentary evidence provided by Dr M or Dr B states that the Appellant has actually converted to Christianity or that he has been or is in the process of being baptised into the faith. "A keen interest" and an assertion that he has "left Islam and turned to Christianity" is not evidence of a genuine and rooted conversion to Christianity. It is noted that the Appellant has only been attending the church since January/February of 2017 and there is no evidence provided at all to show that there was an Iranian background to his Christian conversion."

17. I have considered the witness statement of Dr. B, who attended the hearing to give evidence. It was submitted in the grounds of appeal that the Judge discouraged the Respondent's representative from asking any questions, and that Dr. B had to make a short speech in support of the Appellant. The Judge's Record of Proceedings does not appear to record Dr. B giving evidence at all. The record of the proceedings provided by Mr. Hodson indicates that the Judge asked the Respondent's representative whether he wished to ask any questions of the witness, to which the answer was no. It then records that Dr. B made a short speech. Mr. Hodson's note indicates that the hearing only lasted for 20 minutes in total and, while there are no times stated on the Judge's Record of Proceedings, it is only four and a half pages in length.

18. The witness statement provided by Dr. B states that he has had "several personal conversations" with the Appellant. It states that the Appellant has "left Islam and turned to Christianity". It states that he is "keen to learn and knows about his new found faith" [6].

19. The letter from Dr. M dated 26 July 2017 is referred to by the Judge at [7]. This letter states that the Appellant has been attending services since January 2017. He also attends the meeting for Farsi speakers, and outreach Bible studies. It states that Dr. B, "the leader of our Farsi ministry" reports that the Appellant has a keen interest in studying the Bible, and how his notes indicate a growing understanding "of the Bible and the teachings of Jesus Christ".

20. The Judge finds that the evidence from Dr. M and Dr. B does not state that the Appellant has actually converted to Christianity. He attaches no weight to it at all. He fails to take into account what is said by Dr. M and Dr. B about the Appellant's participation at the church, and the belief of Dr. B that the Appellant has left Islam for Christianity. Further, when considering their evidence he states that no evidence was provided to show "that there was an Iranian background to his Christian conversion". It is not entirely clear what this means, but the Appellant had provided evidence of how he discovered Christianity in Iran. There was also evidence that he was involved in the Farsi speaking ministry at the church. It is not clear why this should be considered to detract from the evidence from the church in any event.

21. There was a clear statement from Dr. B that the Appellant had left Islam. No reasons are given for rejecting this evidence. The Judge has alighted

on the phrase that the Appellant is “a “baby” in the faith”, and indeed this phrase is found in the Record of Proceedings, although it is not attributed to Dr. B. However, even if Dr. B had used this phrase, it does not contradict the Appellant’s evidence of his conversion to Christianity in Iran, and his continued participation in Christian worship in the United Kingdom.

22. I find that the Judge has failed to give adequate reasons for rejecting the evidence of the Dorodian witness, and has relied on semantics regarding the wording used rather than properly considering the evidence as a whole. I find that this is a material error, going to the core of the Appellant’s claim.

23. I do not need to examine the other grounds given that I have found that the Judge materially erred in his consideration of the evidence of the Appellant and his witness.

24. I find that the decision involves the making of material errors of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given the extent of fact finding necessary in order to remake this appeal, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

25. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside.

26. The appeal is remitted to the First-tier Tribunal to be re-heard.

27. The appeal is not to be heard by Judge Lucas.

Signed Date 27 April 2018

Deputy Upper Tribunal Judge Chamberlain