Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06718/2017

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Decision & Reasons Promulgated**
On 13 April 2018	**On 26 April 2018**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant
and

MRS K M H
(ANONYMITY DIRECTION CONTINUED)
Respondent

Representation:
For the Appellant: Mr D Mills, Home Office Presenting Officer
For the Respondent: Mr F Magennis, Counsel, instructed by Migrant Legal Services

DECISION AND DIRECTIONS

1. The appellant (hereafter the Secretary of State or SSHD) has permission to challenge the decision of Judge Lloyd of the First-tier Tribunal (FtT) posted on 13 October 2017 allowing the appeal of the respondent (hereafter the claimant), a national of Iran, against the refusal of his protection claim. The judge found that the appellant was a genuine convert to Christianity and as such would be at real risk of persecution if returned to Iran. The SSHD's grounds take issue with the judge's positive

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finding as regards the genuineness of the claimant's conversion. She contends that it was made in isolation from the very clear findings made by FtT Judge Davidge sent on 20 May 2015 that the appellant was seriously lacking in credibility. In her decision Judge Davidge found, inter alia, that the claimant and her daughter had repeatedly lied and that her account, as between the screening interview, the substantive interview and her witness statements and oral evidence, was "riddled with inconsistencies and discrepancies, the explanations about which have added to the incoherence of her account".

I heard excellent submissions from both representatives, Mr Mills amplifying the written grounds and Mr Magennis contending (as had been stated in the skeleton argument) that the judge had not misapplied **Devaseelan** since para 39(2) of the guidance in that case permitted him to make the assessment that he had. Para 39(2) states that:

> "Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent."

Mr Magennis pointed to a number of passages where the judge had addressed **Devaseelan** e.g. at paragraphs 1, 18, 44 and 54 and highlighted the fact that the judge directly confronted the difficulties potentially posed to the claimant's account by the fact that she had been found not credible in her previous claim. He noted that of particular importance to the judge was the fact that there was corroboration from two independent witnesses who gave live evidence and the SSHD did not challenge the evidence that the claimant had attended at the Iranian Christian Fellowship in Plymouth and regularly attended church.

2. I consider the SSHD's challenge to the judge's findings is made out. It is true that the judge stated that he was applying the guidance set out in **Devaseelan** and that he had stated in his decision that he took the previous decision of First-tier Tribunal Judge Davidge as his starting point. It is also true that the basis of the claimant's asylum appeal on the last occasion was different from the one the claimant was advancing now. Previously she based her claim on a fear of political persecution as someone who was politically active against the government and a "fighter for the rights of women". The basis of the present claim was that she would be at risk as someone who had converted to Christianity since the time of her last appeal. It is also true that the judge's assessment did not rely entirely on the claimant's account but took into account the corroborative evidence given by two independent witnesses. However, reading the judge's decision, I cannot see any real engagement with the findings of Judge Davidge or any effective demonstration that he actually took them as a starting point. Instead what one finds is that the judge deciding that the previous findings were irrelevant because "the issue in the present appeal is quite distinct from that which was at the root of the

previous application and appeal" (paragraph 18; see also paragraph 54). The two claims were indeed distinct, but at the root of both was the issue of the claimant's credibility. It is trite law that just because a person has lied about an asylum-related matter in the past does not mean they are lying about it in the present, especially when the facts now relied on (in this case, the conversion) were not in existence previously. At the same time, it was incumbent on the judge to explain why he considered the claimant's previous lies (which the first Tribunal Judge clearly found to be very extensive) were not to be taken as indicative of untruthfulness in her present claim. The closest the judge came to engaging with the issue was at paragraph 57 where the judge stated:-

> "I find no ground other than pure and utter speculation to conclude that because the Appellant's conversion followed her appeal rights exhausted status her conversion must have been caused by the dismissal of her claim. The Appellant does not dispute that she went to church after having her asylum claimed refused. That however provides no basis for this appeal to conclude that she converted to Christianity merely because she had no further appeal rights to pursue. The Appellant is quite honest that the turmoil of her despair and her state of mind following her failed appeal she attended church on the advice of a friend to find peace and tranquillity. She was affected badly by depression and anxiety and that was aggravated by the failure of her asylum claim. She attended church for the first time in September 2015 on the advice of one friend in particular who found peace in the Christian religion. She became a true a (sic) Christian by a sort of 'journey' that Reverend Maynard has referred to in his evidence. At the same time, he is realistic and pragmatic enough to acknowledge that he cannot look into the inner spirituality of a person and judge whether they are genuine converts or not. However, he has insight into the workings of the Christian Church and the Christian faith and he has had exposure to other asylum seekers. He is as sure as he can be that the Appellant is a genuine convert. That, in my conclusion is further support for the Appellant discharging the lower standard of proof to which he must accord in this appeal."

3. However, there are two serious difficulties with this analysis. First, the question the judge addresses here concerns whether there was a causal correction between dismissal of her previous claim and her conversion. That was not the essential question. The essential question was whether, irrespective of causation, the claimant had undergone a genuine conversion. Second, the only characterisation given to the submission made by the SSHD, that her conversion was not genuine was that it was based on "pure and utter speculation". A judicial finding that a claimant has previously lied extensively cannot fairly be characterised as "pure and utter speculation". Third, the only reply (it was agreed by the parties) that the claimant made when it was put to her in cross-examination that she had been found by the previous judge not to be a credible witness was to say "I went to church to [achieve] inner tranquillity". That reply cannot be said to offer any explanation for why she had lied before or why she should not be considered to be lying this time. I agree with Mr Mills that when a previous judge has found a claimant to have lied extensively, a

proper application of **Devaseelan** principles requires a recognition that the claimant faces an uphill test. It is not enough simply to say that the nature of the asylum claim is quite or very different.

4. It must be frustrating for the claimant that she fails in her attempt to defend the SSHD's grounds because of errors on the part of the judge, but at the same time she cannot expect to succeed in achieving status as a refugee without a proper assessment of her credibility, one that does more than pay lip service, to previous adverse credibility findings of a quite serious kind.

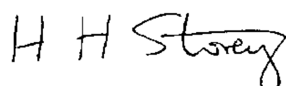
5. For the above reasons I set aside the decision of the FtT judge for material error of law.

6. I see no alternative to the case being remitted to the FtT (not before Judge Lloyd). None of the judge's findings of fact can be preserved, although the next judge will of course wish to consult Judge Lloyd's decision for a record of what the claimant and her witnesses said in oral testimony.

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 her or any member of her 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.

Signed: Date: 25 April 2018



Dr H H Storey
Judge of the Upper Tribunal