



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

Appeal Number: PA/11450/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16<sup>th</sup> November 2018**

**Decision & Reasons  
Promulgated**

**On 27<sup>th</sup> November 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**P P  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Bazini of Counsel instructed by Jein Solicitors

For the Respondent: Miss Z Kiss, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge Isaacs (the Judge) of the First-tier Tribunal (the FTT), promulgated on 31<sup>st</sup> August 2018.
2. The Appellant is a male citizen of Iran born in April 1996. He claimed asylum on the basis of his conversion to Christianity. The application was refused on 31<sup>st</sup> October 2017. The appeal was heard on 16<sup>th</sup> August 2018. The judge did not find the Appellant to be a credible witness. It was not

accepted that the Appellant had converted to Christianity in Iran, and it was not accepted that he attended church in Iran, or had any consequent problems with the authorities in Iran.

3. The judge found that the Appellant's Christian activities in the UK were a "cynical move to bolster his asylum claim." The appeal was dismissed on all grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal. The grounds were prepared by Mr Bazini who had not appeared before the FTT. They are comprehensive, running to eight pages and comprising 27 paragraphs and will be very briefly summarised below.
5. It was submitted that the judge had erred in law in the following ways. It was submitted that the judge had erred in applying conflicting standards of proof, and on numerous occasions reversed the standard required. One example given is paragraph 46 where the judge states "I think it is reasonably likely that he amended his story half way through his asylum interview ...". It was submitted that this was like saying that there is a real risk or possibility that he did this, and therefore I will not accept his evidence. It was contended that the judge was satisfied to a low standard that the Appellant had not told the truth rather than whether there was a real possibility that he had. Further examples are given at paragraphs 55, 65, 70 and 71.
6. Reliance was placed upon Demirkaya v SSHD [1999] Imm AR 498 in which Stewart Smith LJ was considering a Tribunal decision which stated;

"We believe, however, on the appropriate test, that it is reasonably likely that he will be released after one or two days and allowed to return either to Istanbul or to his home village."
7. Stewart Smith LJ stated "on the face of it that is an incorrect statement of the burden of proof. The proper question is whether, applying the lower standard of proof appropriate in asylum cases, there is a real risk that he will not be released."
8. Mr Bazini submitted that this was a serious error, made repeatedly throughout the FTT decision, which rendered the decision unsafe.
9. It was contended that applying the wrong standard of proof was sufficient without more to amount to a material error of law and on that basis alone, the decisions should be set aside. In addition, it was submitted that the judge had erred in considering evidence relating to the Appellant's Christian activities in the UK. It was submitted that the judge erred at paragraph 64 in finding the Reverend's evidence to be of limited value. It was submitted that the judge had misunderstood the evidence and the Reverend had not stated that the twelve week study period was conducted with the Appellant's uncle as an interpreter.

10. It was also submitted that the judge had erred at paragraph 52 by raising a number of points about the Appellant's lack of Christian knowledge which had not been raised by the Respondent in the refusal decision. It was submitted that the judge had erred by relying on issues that had not previously been raised and were not supported by background material, and therefore should have put any concerns to the Appellant or the Reverend who was also present at the hearing.
11. Permission to appeal was granted by Judge Ford in the following terms;
  - "1. The Appellant seeks permission to appeal in time, against the decision of First-tier Tribunal (Judge Isaacs) dated 31<sup>st</sup> August 2018 whereby it dismissed the Appellant's appeal against the Secretary of State's decision to refuse his protection claim based on Christian conversion.
  2. It is arguable that the Tribunal may have erred in reversing the burden of proof at several points in its assessment of the claim.
  3. There is an arguable material error of law."
12. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

### **The Upper Tribunal Hearing**

13. Miss Kiss on behalf of the Respondent conceded that the judge had materially erred in law by applying an incorrect burden and standard of proof, as contended in the grounds, and referred to in the grant of permission to appeal.
14. It was conceded that the error was material and meant that the decision was unsafe. Both representatives submitted that the decision should be set aside, and remitted to the FTT to be heard afresh with no findings preserved.

### **My Conclusions and Reasons**

15. I find the Respondent's concession to be rightly made. In my view the decision of the FTT was prepared with considerable care, but there is a material error in relation to the burden and standard of proof. I therefore set aside the decision of the FTT. No findings are preserved.
16. I have considered the Senior President's Practice Statements at paragraph 7, and find that it is appropriate to remit the appeal back to the FTT because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
17. The appeal will be heard at the Hatton Cross Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by an FTT judge other than Judge Isaacs.

## **Notice of Decision**

The decision of the FTT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FTT with no findings of fact preserved.

The FTT made an anonymity direction. I make an anonymity direction pursuant to Rule 14 of The Upper Tribunal Procedure Rules 2008. No report of these proceedings shall directly or indirectly identify the Appellant or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

16<sup>th</sup> November 2018

## **TO THE RESPONDENT FEE AWARD**

The issue of any fee award will need to be considered by the FTT.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

16<sup>th</sup> November 2018