



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

Appeal Number: PA/05745/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 January 2019**

**Decision & Reasons  
Promulgated**

**On 20 February 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**S A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**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.**

**Representation:**

For the Appellant: Mr A Gilbert, Counsel, instructed by Duncan Lewis & Co  
Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

1. This is a challenge by the Appellant to the decision of First-tier Tribunal Judge Housego (the judge), promulgated on 20 June 2018, by which he dismissed his appeal against the Respondent's refusal of his protection and human rights claims.
2. The essence of the Appellant's case was that he was a convert from Islam to Christianity and would be at risk on return to Iran as a result. The Respondent had not accepted the claimed conversion.

### **The judge's decision**

3. The judge sets out the evidence before him the case law in some detail before going on to make findings of fact. The judge notes that the Appellant had a good knowledge of the Christian faith and that some of the points taken against him in the Respondent's reasons for refusal letter were misconceived. At [62] he sets out a number of matters adverse to the Appellant's general credibility as regards claimed events in Iran.
4. The judge then turns to the evidence of three witnesses who attended the hearing and had given oral evidence. One of these, Rev Heron, had been a pastor at the Appellant's church. The judge accepted that the evidence of this witness, his wife and another individual, had been "sincere" and "truthful". However, the judge found that the absence of the then current pastor at the church, Rev Scott, was "fundamental" to the Appellant's case. Having directed himself to Dorodian 01/TH/01537, the judge appears to either disregard entirely or place virtually no weight upon the other evidence in support of the Appellant's claimed conversion (see in particular [67]). There is a specific finding at [68] that the Appellant was not a Christian convert and the appeal was duly dismissed.

### **The grounds of appeal and grant of permission**

5. The grounds of appeal criticised the judge's approach to the core issues in the case including the reliance on the case of Dorodian. It is said that in light of a fairly recent decision of the Court of Session in Scotland, TF and MA [2018] CSIH 58, Dorodian should no longer be followed and the judge had erred by relying upon its guidance.
6. Permission to appeal was refused by the First-tier Tribunal, (in a decision which appears to bear little if any resemblance to the Appellant's case, but was granted by Upper Tribunal Judge Perkins on 7 December 2018.

### **The hearing before me**

7. Following a pre-hearing discussion between the representatives, Mr Bramble informed me that he accepted that the judge had committed an error of law with particular relevance to [67]. He suggested that the judge should really have adjourned the appeal in order that Rev Scott could attend on a future occasion.

### **Decision on error of law**

8. I conclude that there are material errors of law in the judge's decision. Mr Bramble has conceded as much and I will state my reasons fairly briefly.
9. I have considerable doubt that the Dorodian guidance still holds good in light of developments over recent times in the approach to credibility in general and matters of faith in particular. It seems to me as though the correct approach is for the Tribunal of fact to have regard to *all* relevant evidence in the round, whether or not this includes oral evidence from a specified source such as the current pastor in any given church at which an individual attends.
10. In my respectful view, the conclusions of the Court of Session in TF and MA, particularly paragraph 58, hold considerable persuasive value. In addition, this is consistent with the principle that evidence should be looked at holistically and with anxious scrutiny. There is no general requirement for corroborative evidence, and yet the Dorodian guidelines, at least in part, would appear to impose such a requirement. I also bear in mind the contents of Article 4(5) of the Qualification Directive, which essentially mandates the need for decision-makers to have regard to a wide range of sources of evidence provided by the applicant.
11. In my view, it might well be time for there to be a clear expression from the Upper Tribunal that the Dorodian guidance is no longer sound.
12. In this case there was "sincere" and "truthful" evidence from three individuals, one of whom, Rev Heron, had in fact been the pastor at the church prior to Rev Scott taking over. This, in conjunction with other favourable points, was highly relevant, and could not simply have been put to one side by the simple fact of non-attendance by Rev Scott.
13. There is an error in approach to both credibility and the interlinked issue of the genuineness of the Appellant's conversion.
14. Even if the Dorodian guidelines are still correct, in my view the judge misapplied them in any event. The first of the guidelines relate to an individual's attendance at the church, and *not* the underlying substance of his faith. In the present case, it seemed to have not been in dispute that

the Appellant had in fact been a regular attendee at the church in question and yet the judge links the absence of Rev Scott to the issue of the faith, not simply attendance.

15. This is a further error.
16. The error in approach, on whichever basis set out above, is clearly material.
17. I set the judge's decision aside.

### **Disposal**

18. Mr Gilbert suggested that the matter could be retained in the Upper Tribunal and that perhaps this was an appropriate case in which guidance on the Dorodian case could be given together with guidance on the risk on return to Iran of Christian converts. He did however acknowledge that there was significant fact-finding to be made.
19. Mr Bramble suggested that whether the case was remitted or retained in the Upper Tribunal the adverse credibility finding set out at paragraph 62 of the judge's decision should be preserved.
20. Having thought about the issue of disposal with care, I conclude that this appeal should be remitted to the First-tier Tribunal for a complete rehearing with no findings of fact preserved.
21. I take on board the views of the representatives, but this is a case which requires wholesale findings of fact to be made on all core issues. It may be that the Dorodian issue and risk on return issue is fully canvassed at the remitted hearing and it may be that the matter would find its way up to the Upper Tribunal following this. However, the significant fact-finding exercise will be best carried out by the First-tier Tribunal.
22. In respect of the preservation of adverse findings, I disagree with Mr Bramble's position. It is right that the specific findings set out in [62] were not challenged in the grounds. Having said that, Mr Gilbert is right to point out that these were one aspect of the findings that ultimately led to the composite conclusion at [68] that the Appellant was not a Christian convert. Given that another very significant part of that composite conclusion has been shown to be flawed, it would be artificial to preserve the other aspect. The First-tier Tribunal needs to address this appeal on a clean slate.
23. To that end, I issue directions to the First-tier Tribunal, below.

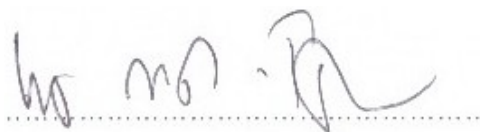
### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal for a complete rehearing.**

**Directions to the First-tier Tribunal**

- 1. This appeal is remitted for a complete rehearing with no preserved findings of fact.**
- 2. The remitted hearing shall not be heard by First-tier Tribunal Judge Housego.**
- 3. Factual issues will of course include whether or not the Appellant is a genuine convert to Christianity.**
- 4. The First-tier Tribunal may wish to consider whether or not the Dorodian guidelines are still appropriate.**



Signed

Date: 16 February 2019

Deputy Upper Tribunal Judge Norton-Taylor