



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

Appeal Number: PA/06613/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 13 June 2019**

**Decision & Reasons Promulgated
On 01 July 2019**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**MD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Behbahani, Solicitor from Behbahani & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Gaskell promulgated on 31 January 2019 in which he dismissed the appellant's appeal against his protection and human rights claims.
2. The appellant is a national of Iran whose claim is founded on a conversion to Christianity and a risk on return to Iran for that reason. The respondent refused the application on the basis that it was not accepted that the appellant would continue to practise his religion on return, that he had not kept this up as much since his baptism and that there was no evidence of

him evangelising or therefore coming to the attention of the authorities in Iran.

3. The appeal was dismissed largely on the basis that it was not accepted that the appellant was a credible witness, with the reasons for dismissing the appeal being given in relatively short form in the context of an asylum appeal from paragraphs 49 to 52 of the decision. The First-tier Tribunal found that there was no doubt as to the honesty and sincerity of the member of the clergy who gave evidence in support of the appellant, but that he could only give evidence as to his belief of the genuineness of the appellant's faith, which essentially did not take matters much further. The Judge states that the lower standard of proof has been applied but the findings, which are essentially contained only in paragraph 51 as follows:

"I do not find the appellant to be a credible witness: my judgement is that this is a confected conversion to Christianity in a further attempt to secure a legal basis for the appellant to remain in the UK.

(a) The explanation of mysteriously being drawn into the East Barnet Baptist Church is, in my judgement highly implausible.

(b) The timing of the conversion is extremely convenient coming after the appellant had exhausted other means of securing asylum or leave to remain.

(c) It is clear to me that the appellant is seeking to manufacture some evidence of evangelisation when the reality is that there is none."

4. The primary basis of appeal in this case by the appellant is that the First-tier Tribunal failed to give sufficient reasons for rejecting the claim and the evidence before it. In particular, there was also a failure to consider the plausibility of the appellant's account and a suggestion that the reference to highly implausible indicated the wrong standard of proof being applied where it should be, as expressly set out in the decision, the lower standard of proof.
5. I find that there is clearly an error of law in this case. In the context of the detailed evidence before the First-tier Tribunal where issues of credibility have been taken against the appellant but not the other witness it is wholly insufficient for the First-tier Tribunal to reject the claim on the basis of one credibility assessment and in only one short paragraph. No proper reasons are given and it is in my view impossible for the appellant to understand why the appeal has been dismissed on that basis. There are clear errors of law in that paragraph and in the lack of further detail in that paragraph which are material to the outcome of the appeal.
6. The further ground of appeal is that the First-tier Tribunal failed to apply the correct test in HJ (Iran) v Secretary of State for the Home Department [2011] 1 AC 596 and in R v Secretary of State for Education [2005] UKHL

15 and further failed to apply the apparent concession by the respondent in the case of TF and MA v Secretary of State for the Home Department [2018] CSIH 58 in which it was recorded that it was not disputed by the respondent that individuals who had converted from Islam to Christianity did face a risk of persecution if compelled to return to Iran. There is more recent guidance from the Secretary of State about the position in Iran which suggested that it has somewhat changed, although does not go so far as what is recorded as a concession in TF and MA. In any event this casts doubt on the final conclusion in paragraph 52 of the First-tier Tribunal's decision that:

“Even if I am wrong in my judgment as to the genuineness of the appellant's conversion to Christianity, he is not a pastor; church leader; proselytiser; or evangelist. The appellant is not a person of interest to the Iranian authorities for any other reason. In my judgment therefore, he is not in any of the risk categories identified in FS. The appellant's case at its height is that he is an “ordinary convert” to Christianity he may be at some risk, but not sufficient risk for the UK's international obligations to be engaged. This is especially the case in circumstances where the appellant can return to his family and enjoy their support.”

7. That again is too short and simplistic a view of the current case law, and fails to engage with the arguments made on behalf of the appellant as to the correct position as to whether he would be at risk on return. That is a further error of law necessitating the decision of the First-tier Tribunal to be set aside.
8. In the circumstances of this case, where much more detailed findings of fact are required; where there is likely to be a need for the parties to submit further up-to-date country information and where I am mindful that there is a pending country guidance case on risk to Christian converts on return to Iran; this is a case which must be remitted back to the First-tier Tribunal rather than being retained in the Upper Tribunal. The further findings of fact required are so extensive that that is the appropriate course.

Notice of decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal and remit the appeal for a de novo hearing before the First-tier Tribunal (Taylor House hearing centre) before any Judge except Judge Gaskell.

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.



Signed
2019

Upper Tribunal Judge Jackson

Date

27th

June