



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

Appeal Number: PA/08100/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 May 2019  
Judgment given ex tempore**

**Decision & Reasons Promulgated  
On 26 June 2019**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**F B  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr M Uddin, Counsel instructed by Duncan Lewis & Co  
For the Respondent: Ms S Jones, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Iran, born in 1980. She came to the UK on 12 August 2016 by air and claimed asylum on the same day. Prior to her arrival she had made unsuccessful applications for a visit visa.
2. A decision was made by the respondent on 4 February 2017 to refuse her protection and human rights claim. Her appeal against that decision came before First-tier Tribunal Judge Sangha on 20 February 2019.

*Judge Sangha's decision*

3. Summarising Judge Sangha's decision, he concluded that the appellant had not given a credible account of having converted from Islam to Christianity. He made that assessment for a number of reasons, including but not exhaustively, what she had said in her screening interview, namely that her religion was Islam; because of inconsistencies in her account otherwise and what could be summarised as implausibilities in her account.
4. Thus, he referred to her having said in the screening interview on 12 August 2016 at question 1.12 that her religion was Shia Islam. The inconsistency was that she claimed to have converted to Christianity some four months before she arrived in the UK at the age of 35. If she had converted to Christianity, Judge Sangha's view was that she would not have said on screening that she was a Muslim. Her explanations were that she was threatened and told that she would be kept in the screening interview area or in detention, as it were, if she did not complete the screening interview. She also explained that she was not feeling well during the screening interview. The judge rejected those explanations because, amongst other things, she said that she was fine when asked whether she was feeling unwell and whether she was ready to be interviewed. There were other reasons given for the judge's adverse view of what the appellant had said in the screening interview, for example in relation to her not having had contact with her husband for the last 10 years.
5. Judge Sangha also concluded that the appellant's explanations for why she converted to Christianity were inconsistent with what is known about the Christian religion, and he gave specific examples. One of the reasons that the appellant gave for wanting to convert to Christianity was in terms of what she said was the inequality of men and women in Islam, for example in relation to divorce and how women could not talk to God when menstruating. Judge Sangha said that the appellant's answers in that respect were not satisfactory and not consistent with background material. The point being made by Judge Sangha was that the purported reason, or one of them, for converting to Christianity, was not in fact borne out by the evidence and therefore that undermined her credibility as to the reasons for converting. He also said that she was not able to give any specific detail about her claimed feelings of emptiness about Islam and feeling that she had been misled. He also referred to what she said about having been required to learn Arabic.
6. At [33] Judge Sangha said that her account of how she was introduced to Christianity (by a friend named Roya) and converted lacked credibility. He found her account in that respect unsatisfactory and her answers in relation to Christianity itself did not lend to her credibility, and indeed undermined it. He found that the appellant did provide some consistent answers in the asylum interview in relation to Christianity but a large proportion of her answers were incorrect. He referred to specific examples.

7. He referred at [34] to her having attended a Christian church in Stoke-on-Trent and the fact that a letter from the church and photographs had been provided. Reverend [JL]'s evidence was that the appellant was a genuine Christian convert. Judge Sangha summarised Reverend [L]'s evidence, concluding at [34] that the evidence showed that the appellant had been attending Bible study classes since September 2016 which would tend to suggest that she had been learning about Christianity. He said that he was not surprised therefore, that she only displayed such knowledge as she had gained about Christianity in the asylum interview commensurate with what she had learnt since September 2016. He referred again to inconsistencies in the interview.
8. He did not find credible that the appellant failed to share the fact of her conversion with her own mother and brother, contrasting that with her claim that she was able to share that she had been raped by a maternal uncle. Judge Sangha made a number of other adverse credibility findings in relation to what is said to be the appellant's conversion to Christianity. After having identified a number of features of her account which he said undermined her credibility, at the end of [34] he said this: "Consequently, I do not accept the Appellant's claim that she has converted from Islam to Christianity".
9. He made further adverse credibility findings. It was at [40] that Judge Sangha went on to consider the psychiatric report of Dr Jethwa which states that the appellant is suffering from depression and PTSD. Dr Jethwa's report, which Judge Sangha quoted at this point, states that those conditions were likely to impair the appellant's ability to concentrate and focus on the matter in hand and that her PTSD may prevent her from providing complete testimony due to the impact of re-traumatisation on her mental state. The report goes on to state that it was important for the Tribunal to be aware that absence of information or inconsistencies in her history could be related to the trauma of the events that she outlines rather than any such gaps being due to her fabricating any information. Dr Jethwa expressed concern about the re-traumatising effects of giving evidence about her past experiences of being raped. It is also said in the report that questioning about those matters could lead to a worsening of the appellant's mental state and increase her risk of self-harm and suicide.
10. At [40] Judge Sangha said that he had considerable doubts about Dr Jethwa's opinion in view of the fact that the appellant was able to conduct a screening interview on 12 August 2016 and a substantive asylum interview on 23 January 2017 during which she was given a number of breaks and plenty of time in which to give her account of events. He also noted that she was able to give a very detailed account to her solicitors who had submitted further representations on her behalf. Judge Sangha further noted that the appellant had not mentioned that she was unable to give her account of events either at the screening or substantive asylum interview stages.

11. He concluded that “considering all the evidence...in the round” the appellant would not have had “any difficulty” in giving oral evidence. Thus, her evidence could not be tested by cross-examination.
12. Judge Sangha went on to say that for all the same reasons he found that the appellant’s claim that she has converted from Islam to Christianity and that she is wanted by the Iranian authorities was lacking credibility and plausibility and “I therefore reject it even on the lower asylum standard.”
13. It was at this point that Judge Sangha then turned to make an assessment of the evidence of the Reverend [L], rejecting his opinion that the appellant is a genuine Christian convert. At [43] he said that although he had attended to give evidence and he believed that the appellant was a genuine Christian convert, that opinion was based on his own observation of her whilst she had been attending his church and the limited time spent with her. He observed that Reverend [L] was not privy to all the evidence that he had before him. He said that considering the evidence in the round he was not satisfied that the appellant had genuinely converted from Islam to Christianity.
14. Reference was then made to what were said to be discrepancies and inconsistencies in the appellant’s written evidence and he repeated what he found incredible in terms of the screening interview and her having said that she was a Shia Muslim.
15. Judge Sangha concluded that even if the appellant was a genuine Christian convert, in the light of the country guidance decision in *SZ and JM (Christians, FS confirmed) Iran* CG [2008] UKAIT 00082 the appellant would not be at risk on return. He also referred to the appellant not having been stopped at the airport when she and her daughter came to the UK. He said that he did not believe that the Iranian authorities have become aware of her following a raid on a house church and her house, and concluded that in any event there would be no reason why she could not relocate.
16. There was then an assessment of Article 8.

#### *The Grounds and Submissions*

17. The grounds raise a number of points. Amongst them is the contention in Ground 1 that the judge failed to have regard to a decision of the Inner House of the Court of Session, *TF and MA v Secretary of State for the Home Department* [2018] CSIH 58. It is argued that Judge Sangha’s decision in terms of its assessment of the evidence of Reverend [L] was inconsistent with the guidance given in that case.
18. Ground 2 asserts that the appellant’s evidence should have been put in the context of the psychiatric evidence which is quoted in the grounds. *TF and MA* is again relied on in relation to this point, more particularly in terms of the rejection of an account, merely because an appellant has told

lies. The grounds argue that the psychiatric evidence provided an alternative and satisfactory explanation for at least some of the inconsistencies that the judge found. It is also asserted in the grounds that Judge Sangha was not entitled to make an adverse inference from the appellant's decision not to give evidence.

19. Next it is said that the judge failed to have regard to the Joint Presidential Guidance Note No 2 of 2010 in terms of the appellant being a vulnerable witness. Lastly, it is contended in Ground 3 that Judge Sangha's finding on risk on return is contrary to the country background evidence and fails to take into account what is in the Country Policy and Information Note at section 5 dated March 2015 about abuse suffered by Muslims who have converted to Christianity, and the risks that such individuals face in terms of harassment, arrest and detention.
20. I heard submissions ably advanced by both parties. I can summarise them in this way. Mr Uddin relied on the grounds. He accepted that the decision in *TF and MA* was not put before Judge Sangha, although perhaps it is more accurate to say that Mr Uddin could not say that it was. He ultimately accepted that that decision was of persuasive authority only although it was initially suggested that the judge was bound by it. Mr Uddin also advanced the argument that Judge Sangha's assessment of credibility was made before taking into account the evidence of the consultant psychiatrist and the evidence of Reverend [L].
21. Ms Jones for her part sought to persuade me that Judge Sangha's decision had been made considering the evidence in the round. She relied on *JL (medical reports-credibility) China* [2013] UKUT 145 (IAC) as to the proper approach in the assessment of medical reports, arguing that it was clear that Judge Sangha was entitled to come to the conclusions that he did.

#### *Assessment*

22. As I indicated to the parties, I am satisfied that Judge Sangha's decision involves an error of law requiring it to be set aside.
23. I do not accept that there is any error of law in terms of his having failed to consider the decision in *TF and MA*. It is not apparent firstly that that decision was drawn to his attention. Secondly, he was not in any event bound by it, although it is a decision which would have been of high persuasive authority. That however, makes a significant difference in terms of the fact that he was not referred to it and thus the extent to which he could have been expected to take it into account.
24. I do however, consider that Judge Sangha's assessment was not made holistically. More specifically, it is plain that he emphatically rejected the credibility of the appellant's claim before assessing the expert evidence and the evidence of Reverend [L]. Thus, for example at [34] Judge Sangha said that he did not accept the appellant's claim that she had converted

from Islam to Christianity. It was not until three pages further on in his decision that he went on to consider the psychiatric evidence.

25. Now it may be that Judge Sangha had valid observations to make about the psychiatric evidence, but it has long been recognised that a decision needs to be made in the context of the evidence overall. It was only after rejecting the appellant's credibility that the psychiatric evidence was considered, at [40]. This is contrary to the proper approach to the assessment of evidence as explained in *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367.
26. In addition, but also on its own a sufficient basis from which to conclude that there was an error of law in the judge's decision, is the fact that there was no appraisal of the evidence of Reverend [L] within the assessment of the appellant's credibility. The appraisal of Reverend [L]'s evidence from [41] only came after the appellant's credibility had been rejected.
27. Again, it may be that Judge Sangha would have been entitled to take into account the extent to which he was in a better position than Reverend [L] to assess the evidence of the genuineness of the appellant's conversion to Christianity because he had evidence before him which Reverend [L] did not. That however, seems to me to be beside the point. That evidence needed to be appraised in the context of the evidence overall, and thus before there was an emphatic rejection of the credibility of the appellant's account. That is quite apart from the argument advanced on behalf of the appellant in terms of the factual inaccuracy in the assessment of the import of Reverend [L]'s evidence in terms of the amount of time that he had had to assess the appellant's Christian beliefs.
28. Whilst it is true to say that Judge Sangha's decision reveals considerable industry in its assessment of the appellant's claim, it is nevertheless an assessment that is flawed for the reasons I have given. The error of law being material, his decision is to be set aside.
29. Having canvassed with the parties the appropriate course in the event that I decided that the decision was to be set aside, I conclude that it is necessary for the appeal to be remitted to the First-tier Tribunal for a fresh hearing before a judge other than First-tier Tribunal Judge Sangha, with no findings of fact preserved. In coming to that conclusion I have had regard to the Senior President's Practice Statement at paragraph 7.2 in the light of the extent of the fact-finding exercise that needs to be undertaken in terms of the appellant's credibility.

### *Decision*

30. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge Sangha, with no findings of fact preserved.

**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.

Upper Tribunal Judge Kopieczek

24/06/19