



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

Appeal Number: PA/08200/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2019**

**Decision & Reasons Promulgated
On 17 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**A K
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Reza of JKR Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Nixon promulgated on 17 August 2019.
2. The Appellant is a citizen of Iran born on 25 February 1989. He left Iran in March 2014 and arrived in the UK on about 4 April 2014. On 2 May 2014 he claimed asylum on the basis of his involvement with the Kurdish Democratic Party of Iran ('KDPI'). His application was refused, and a subsequent appeal dismissed in a decision promulgated on 18 August 2014 (ref. AA/04539/2004).

3. On 11 December 2017 the Appellant made further submissions in respect of his claim for protection raising a new issue in respect of his claimed conversion to Christianity. On 18 June 2018 his further submissions were rejected, but it was accepted that they constituted a fresh claim for asylum, and accordingly he was afforded a right of appeal.
4. The Appellant appealed to the IAC.
5. At his appeal hearing in Birmingham on 27 July 2018 the Appellant appeared unrepresented. In support of his appeal Pastor [SP] from his church gave oral evidence further to a written witness statement (see Decision of the First-tier Tribunal at paragraphs 11 and 13). There was also written evidence from another member of the church (paragraph 19), and it appears that she also attended the hearing but was not called because the Judge "*indicated that I would take into account [GC]'s statement*" (paragraph 11).
6. The appeal was dismissed for the reasons set out in the Decision and Reasons of Judge Nixon promulgated on 17 August 2018.
7. In substance the Judge concluded that he was not satisfied that the Appellant's conversion to Christianity was genuine (paragraph 22), and moreover was not satisfied that the Appellant had been involved in any evangelical or proselytising behaviour on behalf of the church (paragraphs 20 and 22).
8. It is to be noted that the Judge stated that he accepted the testimony of Pastor [SP] and Ms [C] in so far as it related to the fact of the Appellant's attendance at church and Bible studies from November 2016 and the fact of his baptism in July 2017 (paragraph 19).
9. However, in respect of the genuineness or otherwise of the Appellant's commitment to Christianity, the Judge observed that Pastor [P] "*agreed that all he could say about the appellant was that he attended church and Bible studies regularly*" (paragraph 13). Necessarily, the Judge did not hear Ms [C] respond to any such questions in this regard because it had been indicated that she need not be called.
10. In respect of proselytising, or evangelical activities, the Judge commented that Pastor [P] had said nothing about such a role, and that "*[GC] is similarly silent in her witness statement*" (paragraph 20). In context, it seems to me clear that Pastor [P] was not expressly questioned in this regard, the Judge merely stating that he would have expected Pastor [P] to say something about this when asked about his knowledge of the Appellant's faith. Necessarily, again, Ms [C] was not questioned in respect of this aspect of the Appellant's case because she was not called.
11. I am concerned that in circumstances where the Appellant was not represented insufficient was done by the Judge to ensure his full and fair participation in the hearing. In so far as there were any concerns about the

possible incompleteness of Pastor [P]’s evidence, this was a matter in respect of which the Judge should have sought express clarification from the witness himself, or prompted the Appellant to put suitable questions to his witness. More particularly I am concerned that a potentially relevant witness was in substance excluded from giving oral evidence by the Judge’s indication that he would rely upon her statement. In my judgement in such circumstances it was procedurally unfair for the Judge thereafter to comment upon Ms [C]’s witness statement being “*silent*” on some aspects, when it would have been a straightforward matter to hear from her directly.

12. I do not suggest that answers would have inevitably been elicited from either witness that would have substantially changed the nature of the available evidence, or significantly further advanced the Appellant’s case. However, the procedural unfairness - in particular in not hearing from Ms [C] and then relying upon the perceived deficiencies in her written evidence - in the context of an unrepresented appellant, is such that I find material error of law. The Judge unfairly disregarded or otherwise marginalised testimony that at least in part spoke as to conduct of the Appellant that could have been regarded as consistent with genuine faith, such as Ms [C]’s references to his “*keen interest to ... increase his faith*”, “*deep desire to understand God and the scriptures as well as increase his own faith and educate others about God’s message*”, and his “*show[ing] a genuine desire to help others understand the love that Jesus has for them*”.
13. The consequence is that the decision of the First-tier Tribunal must be set aside. Because in substance the Appellant has not had a full and proper consideration of his appeal, the only just outcome is that the decision in the appeal be remade pursuant to a new hearing before the First-tier Tribunal by a Judge other than First-tier Tribunal Judge Nixon with all issues at large.

Notice of Decision

14. The decision of the First-tier Tribunal contained a material error of law and is set aside.
15. The decision in the appeals is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Nixon, with all issues at large.

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 his 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: **11 July 2019**

Deputy Upper Tribunal Judge I A Lewis