



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

Appeal Number: PA/09428/2018

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 12th December 2018.**

**Decision & Reasons Promulgated
On 09th January 2019**

Before

Upper Tribunal Judge Chalkley

Between

**M A M Y
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Smith of Counsel

For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is an adult male and citizen of Iran, who claims to fear persecution in Iran on the basis of his religion. He made application for recognition as a refugee which was refused by the Secretary of State in a decision dated 4th July, 2018. The basis of the appellant's claim was that he had been introduced by a friend to Christianity while he was living in Iran and had attended a house church on some fourteen occasions, when on the last occasion he noticed police outside and he believed that his life was at risk.

2. He claims to have left Iran in December 2015, illegally and to have travelled to Turkey where he remained for a month. He then travelled to Greece where he stayed for three or four days and then on to Austria where he remained for a further three or four days. He then claims to have travelled to Germany where he remained for some five months, and then on to Denmark where he remained for two days. He then travelled to Sweden where he remained for five or six days, and then to Norway where he remained for a week. He then flew to Finland where he remained for eight months. He then travelled by plane to Italy where he remained for two months, and eventually he travelled to the United Kingdom by plane on 9th May 2017, and claimed asylum on the same day.

3. The appellant appealed the decision of the Secretary of State and his appeal was heard by the First-tier Tribunal in Manchester on 13th September this year by First-tier Tribunal Judge Malik. Her findings start at paragraph 17 of her Decision. Criticism is made of the first finding she made at Paragraph 17.I. of the determination where she records that the appellant claims that he was introduced by an Armenian Christian, D, to F, and from there he attended a house church on thirteen occasions at F's home. The appellant claims that D did not evangelise him as he was not allowed to, nor did he provide any Christian materials as this would be a crime in Iran. The judge said:-

“This being so, I do not find it reasonably likely D would have directed the appellant to a website and/or introduced him to F, given that this too would have placed D at risk, as being seen as evangelising a Muslim by directing them to information and/or individuals who could enable them to progress to conversion. Given the appellant claims D facilitated the meeting between him and F in public, there is no reasonable explanation as to why D would have taken the risk.”

4. The criticism made of that finding is that unfortunately the judge failed to have regard to the fact that the transmission of written materials on Christianity would have exposed D to a higher risk of discovery than simply passing on a web address, and reference is made to the evidence of an expert at page 70, paragraph 37, where the expert says that:-

“These organisations do not follow a uniform structure and there is no single application process through which one must progress before being invited to a house church. They work on the system of trust and if D trusted [the appellant] truly to the interest in Christianity and would not be at risk for the secrecy of the organisation, then it is entirely plausible that [the appellant] would have been introduced to F and was allowed to join.”

The judge makes her finding without considering the explanation offered by the appellant at paragraphs 17 and 18 of his witness statement.

5. The second challenge it is said is based on assertions originally made in the respondent's refusal letter. In reply to these assertions the appellant made a rebuttal statement, but unfortunately the judge failed to take into account what the appellant had said in the rebuttal statement before making her findings.

6. I asked Mr Bates whether he was opposing the appeal and he told me that he was because later findings made by the judge were sustainable and still went to the appellant's credibility. Mr Bates did not put it in this way, but his point was that even if those early findings of credibility were wrong, later findings of credibility were correct and sustainable.
7. The difficulty I have with that suggestion is that I believe, unfortunately, the judge erred right at the very beginning of her findings in relation to 17.I. and it is not possible to know to what extent that finding may have influenced her and clouded her decision when she was considering the rest of the evidence before her.
8. I told Ms Smith I did not need to hear from her.
9. I have concluded that the judge did err in law and that her initial findings are wrong and may have influenced her in considering the remaining evidence.
10. For all those reasons I have concluded that the decision should be set aside and the appeal be reheard. Because of the danger that her first finding may have influenced the remaining findings I cannot permit any of her findings to stand.
11. The question then arises as to whether I reserve this to the Upper Tribunal or remit it to the First-tier Tribunal. The difficulty with retaining it in the Upper Tribunal is that now I am retired I sit very infrequently and I know that I am not coming back to Manchester before next March when my current appointment expires because of my age. I do not know whether I will be invited to extend my appointment or not, but in the circumstances I think it is probably safer if I remit this appeal to the First-tier Tribunal to be heard afresh, so it will be heard by a judge other than Judge Malik, afresh.

Richard Chalkley

A judge of the Upper Tribunal.

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.

Richard Chalkley

A judge of the Upper Tribunal.

Dated 19 December 2018