



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

Appeal Number: PA/10711/2017

THE IMMIGRATION ACTS

**Heard at Newport
On 25 January 2019**

**Decision & Reasons
Promulgated
On 1 March 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**SARDAR [Q]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Clark (Counsel instructed by Migrant Legal Project (Cardiff))

For the Respondent: Mr C Howells, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Iraq. After arrival in the UK sometime in 2016 he claimed asylum on the basis that he would be at risk on return on account of his conversion from Sunni Islam to Zoroastrianism. On 11 October 2017 the respondent decided to refuse his claim. The appeal came before Judge Osborne of the First-tier Tribunal (FtT) who, in a decision sent on 28 February 2018 dismissed his appeal.

2. The appellant's grounds submitted that the judge had erred in law in failing to take into account of material background evidence (grounds 1 and 2); in failing to give adequate reasons for rejecting the reliability of the letter written on 7 February 2016 by a Zoroastrian organisation in Iraq (ground 3); in disregarding the transcript of the audio record of interview when assessing the consistency or otherwise of the evidence the appellant had given about threats from his uncles (ground 4); and in being procedurally unfair in relying on a discrepancy in his evidence regarding threats from his uncles when the respondent had not put the matter to the appellant in cross-examination (ground 5).
3. I am grateful to both representatives for their careful submissions.
4. I see no merit in grounds 4 and 5. As regards ground 4, I am, satisfied that the judge took account of all the evidence including that given by the appellant in his witness statement (see paragraph 15) and was entitled to conclude that he had not been wholly consistent in his evidence regarding whether or not his maternal uncle had ever threatened him.
5. In any event, paragraph 28 (where the judge addresses the appellant's evidence regarding the maternal uncle) clearly provides an additional reason for the conclusion that the appellant had not given credible evidence in relation to the nature of threats made against him and it is clear from paragraphs 25 and 27 that it was the appellant's inconsistencies in the evidence he gave about threats from the paternal uncles that were seen as far more important.
6. Ground 5 founders on the evident fact that the respondent had identified discrepancies in the appellant's evidence about threats from the paternal uncles and the fact that the appellant had embellished their level of seriousness over time. The appellant then sought to explain these discrepancies in his witness statement. It was open to the judge to make findings on these discrepancies, even though they were not, it appears, the subject of questions in cross-examination.
7. I am persuaded, however, by the first two grounds. At paragraph 19 the very first reason for finding the appellant's account of conversion to Zoroastrianism not credible was set out as follows.

"19. The Appellant in the asylum interview confirmed that faith is important to him. The changing of his established Sunni Islamic faith would therefore have been a matter of real significance to the Appellant. However, when asked for his reasons for his disenchantment with his Islamic faith, I am far from satisfied that the Appellant provided any adequate description of his feelings or reasons to change his faith. The Appellant is patently of the belief that those who are members of Daesh are not representative of Islam and that the Islamic faith exists beyond Daesh. Nonetheless, the Appellant gives as a reason for his disillusion with Islam the fact that members of Daesh are fighting, waging wars, and killing innocent people in the name of Islam. I am far from satisfied that someone as intelligent as the Appellant (he

was a university student who passed his first year at university) and someone who had a genuine Sunni Islamic faith would become disillusioned by their established faith because others decide to behave in a manner in which they disapprove. There are many millions of Sunni Muslims who observe the Islamic faith in a wholly appropriate and peaceful manner. The reasons provided by the Appellant are conveniently superficial; they have no depth; they are objectively incapable of any reasonable belief. On the basis of the evidence I am far from satisfied that the Appellant has provided genuine reasons for becoming disillusioned with his Sunni Islamic faith whether as described by him or at all.”

8. The assessment that such reasons are “objectively incapable of any reasonable belief” is at odds with the analysis contained in the report in the appellant’s bundle from the United States Commission on International Religious Freedom, May-August 2016. At paragraphs 19-20 the report noted a “recent trend in conversion from Islam to Zoroastrianism” and proffered two possible reasons:

“The first is the perception on the part of Kurds that their roots are closer to Zoroastrianism than Islam with Kurdish adherents often talking about the inherent “Kurdistan” [elements] of Zoroastrianism. The second more speculative reason is that conversion to Zoroastrianism is a reaction to the rise of ISIS and extreme sects of Islam in the region”.
9. The appellant had stated in his witness statement that he had been taught that the Zoroastrian prophet was Kurdish (see also his answer at Q98 of his asylum interview).
10. There is nothing to indicate that the judge took this background evidence, coupled with the appellant’s own evidence as to his knowledge of Zoroastrian history, into account or sought to address whether it was significant enough to have an impact on the judge’s credibility assessment. Mr Howells sought to argue that this evidence was too peripheral to require assessment, especially as one of the reasons given in the Commission report was described as “more speculative”. However, the first of the two reasons was not so qualified and the judge’s approach treats the issue as simply one he could decide based on his own perceptions. Further, there were two other articles contained in the appellant’s bundle that corroborated the view taken in the US report.
11. I am satisfied that the judge’s failure to consider the external consistency or otherwise of the appellant’s explanation for his conversion with the background evidence amounted to a material error of law. I cannot exclude that had the judge addressed his mind to this evidence he may have assessed the other aspects of the appellant’s account differently.
12. For the above reasons I set aside the decision of the judge for material error of law.

13. I see no alternative to the case being remitted to the FtT (not before Judge Osborne). Whilst I consider that Judge Osborne's analysis identifies several significant shortcomings in the appellant's account, the appellant is entitled to have his appeal heard de novo by another judge.

No anonymity direction is made.

Signed

Date: 20 February 2019

A handwritten signature in black ink that reads "H H Storey". The letters are written in a cursive, slightly slanted style.

Dr H H Storey
Judge of the Upper Tribunal