



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000018
First-tier Tribunal No:
PA/54128/2021 (IA/12226/2021)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JM
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Mr Khan, Counsel

Heard at Manchester Civil Justice Centre on 8 August 2023

DECISION AND REASONS

1. Whilst it is the Respondent who is seeking leave to appeal today, I have hereinafter referred to the parties as they were identified in the First-tier Tribunal. JM will be referred to as the Appellant and the Secretary of State for Home Department will be referred to as the Respondent.
2. The Appellant is a national of Iran, date of birth 29 November 1990, who on 15 September 2017, 3 December 2018 and 29 January 2019 made fresh submissions for asylum based on his conversion to Christianity. The Respondent refused his application to set aside his deportation order in a decision dated 22 July 2022 because the Respondent was not satisfied the Appellant was a genuine Christian convert or someone who would be at risk of persecution.
3. The case was listed before Judge of the First-tier Tribunal Evans (hereinafter referred to as the FTTJ) on 7 December 2022 who

subsequently allowed the Appellant's appeal under the Refugee Convention and on human rights grounds.

4. The Respondent sought permission to appeal on 14 December 2022 arguing the FTTJ had erred by reaching a perverse decision on a material matter. Permission to appeal was initially refused by a First-tier Tribunal Judge on 30 December but following a renewed application Upper Tribunal Judge Jackson granted permission to appeal stating:

“It is just arguable that the high threshold of a ground of appeal on the basis of perversity is met, together with an arguable failure to give adequate reasons as to why the Judge found that the Appellant's evidence alone would not have satisfied him that the Appellant was a genuine Christian convert, but the evidence of others was sufficient, in circumstances where the Appellant has previously been found to be a habitual liar and manipulative. There are arguably no reasons given why it would be unlikely that such a person would not have been able to persuade other witnesses over an extended period of time that he was a genuine convert. Permission is granted on all grounds.”

5. Mr McVeety adopted the grounds of appeal and the grant of permission and invited the Tribunal to find there had been an error in law. In short, he argued the FTTJ had allowed this appeal not because he believed the Appellant but because he believed the witnesses “believed he was genuine in his Christian beliefs”. At paragraph [68] of the FTTJ's decision the FTTJ stated “I give little weight to his evidence” and Mr McVeety submitted this was why the decision was perverse. He reminded the Tribunal that it was not the witnesses' appeals, but the Appellant' appeal. The fact they believed he was genuine was only ever capable of being supporting evidence. If the FTTJ did not believe the Appellant then supporting evidence could not assist the Appellant.
6. No Rule 24 statement had been filed but Mr Khan invited the Tribunal to find there had been no error in law and that the issues raised were simply a disagreement with the outcome. He submitted the FTTJ had provided detailed reasoning for his finding the Appellant was a genuine convert and asked the Tribunal to consider the totality of the decision. The FTTJ indicated in his decision those areas in which he accepted the Appellant's evidence and those he did not and concluded that as he had been attending church since 2016 he was a genuine convert especially given the level of support he had brought to the hearing.
7. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

8. This appeal is based on the Respondent's grounds of appeal that the FTTJ reached a perverse finding on whether the Appellant was a genuine Christian convert. There was no dispute that if that finding was open to the FTTJ then the Appellant would be at risk of persecution. Whilst this was a finely balanced argument for the reasons hereinafter provided, I found there was an error in law.
9. The Appellant's claim centred around his claim to be a genuine Christian convert. At paragraph [52] the FTTJ made it clear that "the Appellant's credibility is a highly relevant consideration in my assessment of it. This is undoubtedly damaged significantly by the following matters". The FTTJ then gave three reasons why his credibility was significantly damaged namely his immigration history, his criminal conviction and sentencing remarks and credibility findings from his appeal in 2015. The FTTJ rejected the Respondent's additional claims (delay in making this current application and inconsistencies in the account) that his credibility was further damaged.
10. Mr Khan submitted that whilst the Appellant started from a very negative position the FTTJ made numerous positive findings about his current claim including finding the Appellant had demonstrated significant knowledge of the church which was internally consistent albeit I note the FTTJ found this could be due to the fact he was self-evidently intelligent and quick thinking and this could reflect a fabricated account.
11. Mr McVeety highlighted the FTTJ's finding at paragraph [58] of the decision where he stated, "the reality is that much depends in this case on the evidence given by the other witnesses". Mr McVeety's primary submission was that witnesses can only provide supporting evidence to what the Appellant claimed.
12. Most damaging to the Appellant, and this is Mr McVeety's argument, is the FTTJ's finding at paragraph [66.1] of his decision where he said, "The Appellant's credibility is very significantly damaged by the matters set out at [52] above. I would not have found it reasonably likely that he was a genuine Christian convert as a result of his own evidence alone. The history of his time in the UK is marked by dishonesty in relation to immigration matters and he has a criminal conviction for a serious drugs offence." Mr McVeety submitted the FTTJ clearly found that the Appellant was a dishonest witness and the FTTJ would not have believed what the Appellant told him save for the witness evidence.
13. I have to ask myself is Mr McVeety's approach correct given the positive findings contained in paragraph [66] of the decision. The FTTJ summed up his task at paragraph [67] where he stated:

"Realistically, therefore, there I find that there are two possibilities. The first is that the Appellant is a skilled liar who has for nearly 7 years kept up the pretence that he is a genuine Christian convert sufficiently well to convince all the other

witnesses despite not in fact being a Christian. The other is that he is in fact a genuine Christian convert.”

14. In short, if the FTTJ did not believe the Appellant’s own personal evidence can that disbelief be shifted by opinion evidence of other witnesses. Each case must be taken on its own facts and in deciding this I have considered the totality of the findings.
15. The issue with this decision is best demonstrated in paragraph [68] of the decision where the FTTJ stated “I give little weight to his evidence” and when this is read alongside what he wrote at paragraph [52] of the decision I find that whilst the FTTJ found the witnesses were genuine in their beliefs about the Appellant’s beliefs this is not the same as finding the Appellant was telling the truth to the lower standard of proof.
16. As Mr McVeety succinctly put it at the hearing before me if the FTTJ had found the Appellant was credible there would have been no grounds of appeal. Unfortunately, for the Appellant this is not what the FTTJ did and for the reasons given in the permission and adopted by Mr McVeety I find there was an error in law. Both parties agreed that given the period that has passed since this appeal was heard up-to-date live evidence would be needed.
17. Paragraph 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the “Practice Statements”) recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
 - a. the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party’s case to be put to and considered by the First-tier Tribunal; or
 - b. the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
18. In my judgment, given that it is necessary for all the issues in this case to be considered afresh on the merits, this case falls within para 7.2 (a) and (b) because further evidence, including oral evidence is likely, and findings of fact on the issues will need to be made.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety.

This case is remitted to the First-tier Tribunal for a fresh hearing on all issues on the merits by a Judge other than Judge of the First-tier Tribunal Evans.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

Case No: UI-2023-000018
First-tier Tribunal No: PA/54128/2021 (IA/12226/2021)

8 August 2023