Upper Tribunal
(Immigration and Asylum Chamber)

MH (review; slip rule; church witnesses) Iran [2020] UKUT 00125 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 28 January 2020	
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Before

THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE BLUNDELL

Between

MH (IRAN)
(ANONYMITY DIRECTION MADE)
Appellant/Respondent

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent/Appellant

Representation:

For the Appellant: Ms Bronwen Jones, instructed by Freedom Solicitors
For the Respondent: Ms Susana Cunha, Senior Presenting Officer

(i) Part 4 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 contains a 'toolkit' of powers, the proper use of which saves time and expense and furthers the overriding objective.

(ii) A judge of the FtT who is minded to grant permission to appeal on the basis of a seemingly obvious error of law should consider whether, instead, to review the decision under appeal pursuant to rule 35.

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(iii) *A decision which contains a clerical mistake or other accidental slip or omission may be corrected by the FtT under rule 31 (the 'slip rule'). Where a decision concludes by stating an outcome which is clearly at odds with the intention of the judge, the FtT may correct such an error under rule 31, if necessary by invoking rule 36 so as to treat an application for permission to appeal as an application under rule 31. Insofar as* <u>*Katsonga*</u> *[2016] UKUT 228 (IAC) held otherwise, it should no longer be followed.*

(iv) *Written and oral evidence given by 'church witnesses' is potentially significant in cases of Christian conversion (see* <u>*TF & MA v SSHD*</u> *[2018] CSIH 58). Such evidence is not aptly characterised as expert evidence, nor is it necessarily deserving of particular weight, and the weight to be attached to such evidence is for the judicial fact-finder.*

DECISION AND REASONS

1. Both members of this Tribunal have contributed to this decision.

2. On 15 August 2019, a judge of the First-tier Tribunal issued his decision and reasons in this appeal. It is clear – and it is accepted by both parties – that the judge intended to dismiss the appeal on all grounds. Extensive reasons were given for concluding that the appellant's protection claim was a fabrication and that the appellant's removal to Iran would not place the respondent in breach of her international obligations. Unfortunately, in recording his decision on the appeal, the judge stated

> "<u>Decision Asylum Appeal: allowed</u>; Human Rights appeal: dismissed; Humanitarian Protection appeal: dismissed." [emphasis added]

3. The Secretary of State appealed against the underlined part of the decision, submitting that it was plainly in error when considered in light of the judge's reasons. Permission to appeal was granted by a judge of the First-tier Tribunal on that basis.

4. The appellant also sought permission to appeal, contending that the reasons given by the judge for disbelieving her account were legally unsustainable or insufficient. Permission to appeal was granted by Upper Tribunal Judge Blum, who considered each ground to be arguable.

5. We will refer to the parties as they were before the FtT: MH as the appellant; the Secretary of State as the respondent.

Background

6. The appellant is an Iranian national who was born on 1 November 1967. She entered the UK in 2017 and claimed asylum on the basis of her imputed

political opinion. That claim was refused by the respondent and an appeal to the First-tier Tribunal was dismissed by Judge Siddiqi in March 2018. Judge Siddiqi did not accept the appellant's claim that she was perceived as a spy by the Iranian regime. The judge also noted that the appellant had stated that she had become disillusioned with Islam and attracted to Christianity, although she did not seek to argue at that time that she would be at risk on that basis. The judge nevertheless expressed her view that this aspect had merely been added to bolster what was otherwise a weak claim.

7. The appellant's appeal against Judge Siddiqi's decision was ultimately unsuccessful and, in January 2019, she made further representations to the respondent. She relied on her conversion to Christianity and submitted that the claim she was advancing in that respect had not been considered in any detail by Judge Siddiqi. The respondent interviewed the appellant in connection with these submissions, after which she accepted that the further representations amounted to a fresh claim under paragraph 353 of the Immigration Rules. The respondent did not accept, however, that the appellant would be at risk on return to Iran, since she rejected her claim that she had converted to Christianity. Whilst it was accepted that the appellant had been attending church in the UK, and that she had been baptised, the respondent did not accept that the appellant had any genuine commitment to the Christian faith.

The Appeal to the First-tier Tribunal

8. The appellant exercised her right of appeal and the appeal came before a judge of the First-tier Tribunal, sitting in Manchester on 25 July 2019. The appellant was represented by counsel, the respondent by a Presenting Officer. The judge heard evidence from the appellant and from Dr MN, a senior member of the church which the appellant had been attending in Wigan. Letters were also submitted from other members of the church, attesting to the appellant's attendance and to her adherence to the faith.

9. At [20]-[30], the judge reviewed the extensive case law on Christian conversion in Iranian protection claims. At [31], he turned to consider the primary question in the appeal, of whether the appellant had genuinely converted to Christianity. He noted that the appellant had attended church; that she had been baptised; and that she had demonstrated knowledge of the "basic details" of Christianity in her second interview. Nevertheless, for reasons he gave at [32]-[33], the judge did not accept that the appellant had genuinely converted. He considered aspects of the appellant's account to be implausible, with particular reference to the manner in which the appellant had behaved at around the time she had converted to Christianity: [32](i)-(iv). At [32](v), the judge attached limited weight to Dr MN's opinion about the appellant's claimed conversion for the following reasons:

> "The appellant relied upon a witness from her church, [Dr MN], who spoke of the appellant's attendance and participation at the church. [Dr MN] recalled an occasion when she attended the appellant's home and saw her reading the bible and making notes. I found [Dr MN's] evidence unsatisfactory in one important regard. When asked whether she had attended the Tribunal before to give evidence, [Dr MN] said that [sic] provided testimony for one such appellant earlier in 2019 in respect of their faith. When questioned further about the outcome of the appeal, the witness was hesitant and said that she did not know. She said that she has not asked the person of the outcome of their appeal and that she would not want to put them under pressure. I was left with the impression that [Dr MN] did not know the person very well and I do not consider this evidence credible. If [Dr MN] is to attend the Tribunal and give evidence about something as personal as a person's faith then I would expect her to know that person sufficiently well and for their relationship to be such that they could discuss with one another their status in the UK. When weighing [Dr MN's] evidence into the assembly of evidence in this appeal I conclude that this witness honestly does believe the appellant is a Christian convert but that her evidence is limited to that which the appellant displays externally whilst in the church environment."

10. The judge turned at [33] to consider the written evidence given by two other members of the church. He was satisfied that the appellant had spent time with them in a Christian setting and that they genuinely believed that she was a Christian but, having considered the evidence in the round and in light of the concerns he had expressed previously, he did not consider that her regular attendance at church was on account of a genuine conversion to Christianity.

11. At [34], the judge reminded himself of FS & Ors (Iran – Christian Converts) Iran CG [2004] UKIAT 303. He had cited that decision and SZ & JM (Christians – FS confirmed) Iran CG [2008] 82 (IAC)[1] in an earlier section of the decision. He did not accept that the appellant was an evangelist (as she had claimed) because the evidence of any such activity in the UK was limited and because her Facebook activities pre-dated her conversion: [35]. He concluded that the appellant's online activity had been "an attempt to show her to be a Christian": [36]. For reasons he gave at [37], the judge did not accept the appellant's account that she would be at enhanced risk as a single woman. He found her claim to have become separated from her husband untrue, partly because he considered their actions as a couple to be implausible and partly because there was an absence of evidence of the husband's reaction.

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[1] It is to be noted that these decisions are no longer designated as country guidance on the situation for Christian converts in Iran. The guidance is now to be found in PS (Christianity - risk) Iran CG [2020] UKUT 46 (IAC), although that decision was issued after the decision of the FtT in this case.

12. At [39], the judge summarised his conclusion, which was that the appellant had not proved that she was a genuine Christian convert. Even if he was wrong about that, however, he did not find that she would be at risk because she was not an evangelist or a single woman; she would not be at risk as an "ordinary convert".

13. At [40], the judge resolved what he described as a "secondary issue… in which the appellant submits that her internet activity … has been such that she would come to the attention of the authorities on return to Iran". He cited AB & Ors (Iran) [2015] UKUT 257 (IAC), which had also featured in his earlier review of the relevant authorities. He found that the appellant could delete her posts before she returned to Iran, since they were not reflective of her genuinely held beliefs. In any event, he considered that the Upper Tribunal's guidance was to be considered in light of the subsequent decision of the ECtHR in A v Switzerland [2017] ECHR 1171, which "introduces nuance" by recognising that the Iranian authorities take into account the likelihood of individuals falsely claiming to have converted in order to secure asylum. He did not consider the appellant's activities would expose her to a risk of persecution on return to Iran: [41]. The remainder of the decision concerns matters unrelated to the appellant's protection claim, which are not material to this appeal.

The Appellant's Appeal

14. The appellant's grounds of appeal were not settled by counsel and are somewhat discursive. In granting permission to appeal, Upper Tribunal Judge Blum stated materially as follows:

> "[1] Some of the grounds challenge the 'weight' accorded by the judge to elements of the appellant's evidence. The apportionment of weight will, absent any irrationality, rarely amount to even an arguable legal error. It is nevertheless arguable that the judge failed to consider or apply the persuasive guidance contained in TF & MA [2018] CSIH 58, with particular reference to the appellant's lengthy and regular church attendance and the evidence emanating from [Dr MN], who arguably should have been regarded as an expert given her role in the church. Although the judge raised credibility concerns with [Dr MN's] evidence based on her ignorance of the immigration status of another person whose appeal she supported, there are no clear findings in respect of [Dr MN's] evidence relating to her attendance at the appellant's home or of the nature of her relationship with the appellant [32(v)].
>
> [2]Although the judge finds, in the alternative, that even if the appellant is a genuine convert she would not be at risk in Iran (applying FS and others (Iran – Christian converts) Iran CG [2004] UKIAT 303 and SZ and JM (Christians – FS confirmed) Iran CG [2008] UKIAT 82), his further findings relating to her Facebook account at [40(i) & (ii)] are arguably premised on the appellant not being a convert at all. If the appellant is a genuine convert it is arguable that requiring her to remove religious

Facebook posts could breach the principles established in HJ (Iran) v SSHD and her refusal to remove the posts may lead to the perception by the Iranian authorities that she is more than an ordinary convert."

15. Ms Jones filed and served a skeleton argument in compliance with the directions issued by Judge Blum. In her oral submissions, she helpfully delineated five main heads of argument, which can be summarised as follows:

    (i) The judge had erred at [37](iii) when he "expected some written communication" between the appellant and her husband to demonstrate the difficulties in their relationship as a result of her conversion. It was impermissible to require corroboration of this evidence: ST (Corroboration – Kasolo) Ethiopia [2004] UKIAT 119. In any event, there was no suggestion that the point had been raised with the appellant, which was procedurally unfair.

    (ii) The judge's reliance, at [32] in particular, on his own views of the plausibility of the appellant's account was erroneous in a number of respects. The judge had failed to apply HK v SSHD [2006] EWCA Civ 1037 or Y v SSHD [2006] EWCA Civ 1223. His reasons did not withstand scrutiny; he had failed to take account of material matters; and had demonstrated an element of cultural bias in expecting the appellant's husband to react in a specific way.

    (iii) There was no rational reason given by the judge for discounting the evidence given by Dr MN. The fact that she did not know the outcome in a separate appeal was not rationally capable of detracting from the weight which should otherwise have been given to her evidence.

    (iv) The judge had failed to apply the decision of the Inner House of Session in TF & MA v SSHD [2018] CSIH 58. The decision was before him in the appellant's bundle and was persuasive authority on the weight which should ordinarily be attached to the evidence of members of an appellant's church. In this appeal, there was oral evidence from Dr MN and written evidence from two other members of the church and the judge had given inadequate reasons for discounting their views on the appellant's conversion.

    (v) The judge erred in his analysis of the risk to the appellant. As noted by Judge Blum, the finding in relation to the risk to the appellant from her Facebook activity was not genuinely in the alternative. In any event, the judge had given inadequate reasons for preferring the approach in A v Switzerland to that in AB (Iran).

16. For the Secretary of State, Ms Cunha submitted that the judge's findings had been properly open to him for the reasons he had given. Insofar as the judge

was criticised for noting the absence of evidence which should have been readily available to the appellant, it was permissible for him to do so: TK (Burundi) v SSHD [2009] EWCA Civ 40; [2009] Imm AR 488. Equally, it had been permissible as a matter of law for the judge to conclude as he had in relation to the reaction of the appellant's husband, particularly when it was recalled that the appellant had been somewhat vague about the chronology of her conversion.

17. In relation to the reasons given for rejecting the evidence of Dr MN, Ms Cunha submitted that the judge's approach was entirely proper. An expert's opinion might properly be afforded less weight when it was established that he was unaware of a material matter, or had failed to take that matter into account. The position in this respect was precisely similar, in that Dr MN had failed to take into account the ultimate outcome in the other appeal in which she had given evidence. That ground of appeal should not succeed, whether in relation to Dr MN's evidence or in relation to the evidence of the other individuals from the church, who had only given written evidence.

18. In relation to the judge's assessment of the risk to the appellant, Ms Cunha submitted that it had been open to the judge to prefer the 'nuanced' approach adopted in A v Switzerland, rather than following the reported decision in AB (Iran). That was particularly so when the decision of the ECtHR concerned a case which was factually very similar to the appellant's. AB (Iran), on the other hand, was factually dissimilar to the appellant's case, since the appellant in the reported decision had left the country illegally. The judge's approach was not contrary to HJ (Iran) v SSHD [2010] UKSC 31; [2011] 1 AC 596 or RT (Zimbabwe) v SSHD [2012] UKSC 38; [2013] 1 AC 152 because the appellant had no genuinely held belief in Christianity and she could legitimately be expected to delete her Facebook posts, as the judge had found.

19. Ms Jones made three points in response. Firstly, even if this was a case such as TK (Burundi), in which the absence of readily available evidence could be held against the appellant, it was not clear what evidence of marital disharmony was actually expected by the judge. Secondly, the evidence of other members of the congregation (particularly Dr MN) was akin to expert evidence and the judge had given no sustainable reason for discounting that evidence. Thirdly, A v Switzerland did not, when properly understood, provide any proper basis for dismissing the appellant's appeal if she was a genuine convert. To that extent, the judge's later findings were not findings in the alternative.

Analysis of the Appellant's Appeal

20. In all but one respect, we do not consider Ms Jones to have established that the judge erred in law in the extensive reasons he gave for rejecting the appellant's account.

21. As to the first of her submissions (which we heard *de bene esse* in the absence of a clear reference in the grounds), we do not accept the submission that the judge *required* the appellant to corroborate her account. The judge stated at [37](iii) that he would have "expected some written communication" and not that he was unable to accept the appellant's account without the same. As Ms Cunha submitted, the former approach accords with decision of the Court of Appeal in TK (Burundi), in which Thomas LJ (as he then was) stated at [16] that a judge was 'plainly entitled' to take into account the absence of supporting evidence which is or should be readily available (Moore-Bick and Waller LJJ agreed).

22. In her reply, Ms Jones submitted that the judge had erred in attaching significance to the absence of supporting evidence when it was not clear exactly what evidence might have been produced. We do not accept that submission either. The appellant has been in the United Kingdom for some time and has, she says, been in contact with her husband before and during her conversion to Christianity. It was open to the judge to note that there was no documentary evidence of the appellant's husband's dissatisfaction with the appellant.

23. Nor do we accept the third way in which Ms Jones put this particular submission, which was that this point was not put to the appellant for comment. Leaving to one side the fact that not all points which concern a judge need be put expressly to a witness (Maheshwaran v SSHD [2002 EWCA Civ 172; [2004] Imm AR 176 refers), there is no evidence whatsoever to support the submission that the point was not squarely raised, whether by the judge or the Presenting Officer. Insofar as such procedural complaints are to be advanced, it is well established that they must be supported by evidence, usually from the advocate with conduct of the appeal before the FtT. There is no such evidence before us.

24. Ms Jones made determined submissions about the judge's approach to the plausibility of the appellant's account. She submitted that the judge erred in imposing his own "subjective views" of what would or would not have happened in various respects. His conclusions, particularly at [32], were said to have been reached in a manner which was contrary to the approach required by authorities including HK v SSHD and Y v SSHD.

25. Both of those decisions of the Court of Appeal, and Awala v SSHD [2005] CSOH 73, emphasised that the plausibility of an account could not be gauged by domestic standards and that a judge "must look through the spectacles provided by the information he has about conditions in the country in question" (Y v SSHD, at [27], per Keene LJ) before making any such finding. Reading this judge's decision as a whole, that is precisely what he did. He took demonstrable care to inform himself about the conditions in Iran for Christian converts. He undertook an extensive review

of the relevant reported decisions on the subject at [20]-[30] before he made his findings of fact. No more was required of him. He was not required to set out what was said in HK v SSHD or Y v SSHD, provided that he adopted the required approach. To require him to set out tracts of the authorities would be to substitute formulaic for substantive justice, as Sedley LJ once noted in response to a similar submission: SR (Iran) v SSHD [2007] EWCA Civ 460, at [5] (Auld and Hughes LJJ agreed). In our judgment, it was properly open to the judge to note various respects in which he considered the appellant's account to be implausible. He was entitled, for the reasons that he gave, to doubt the appellant's account for these reasons.

26. Ms Jones' third submission falls on rather more fertile ground, however. These submissions concern the basis upon which the judge rejected the supporting evidence given by members of the appellant's church.

27. The member of the church who attended to provide oral evidence in support of the appellant was Dr MN. She had written a very brief letter in support of the appellant's claim. The letter stated that the appellant had been attending their church since March 2018; that she had been involved in prayer nights and Iranian bible study gatherings; that the appellant was baptised in September 2018 and that, in Dr MN's opinion, "she is a true believer in the Christianity [sic] faith".

28. In her oral evidence, Dr MN stated that she was an anaesthetist at a hospital in Liverpool, who had been attending the church in Wigan for many years. She stated that she had various different roles at the church, including hosting, interpretation, bible study groups and entertaining people in her own house. She confirmed that the appellant attended every week and that she was an "active participant" in bible study. She had seen the appellant joining in with prayers and singing songs in Farsi. Dr MN was asked why she had said in her letter that the appellant was a "true believer". In response, she said that she had only ever supported one other person at court, although she did not know the outcome in that appeal. She knew that the appellant was a true believer because she had been to the appellant's house unannounced and had seen her through the window, reading a Farsi bible and making notes.

29. In addition to Dr MN's evidence, the judge also had letters from two other members of the church. The first was from a plasterer named FM, who had been a member of the church for sixteen years. He described how the appellant had taken part in community groups with him, during which she shared "what God had done in her life" and would also share verses from the bible which had helped her in different situations. He stated that it was great to see the appellant going from "strength to strength with her walk with God and building a new life in the kingdom of God". The final letter was from BT, the pastor of the church in question. He stated that he had been the pastor for thirteen years. The church had a policy of not

representing individuals in court but from what he had witnessed, he considered that the appellant had made a "legitimate decision to follow Jesus".

30. We have set out in full the judge's analysis of Dr MN's evidence. He considered it "unsatisfactory in one important regard", which was that Dr MN had been unable to state the outcome of the previous appeal in which she had given evidence in support of a person who had claimed to have converted. We accept Ms Jones's submission that the judge's concern in that regard did not rationally entitle him to reach the conclusion that Dr MN's evidence about this appellant was "limited to that which the appellant displays externally whilst in the church environment." As a senior member of the church, Dr MN had expressed her opinion about the appellant's conversion and she had based that opinion, in part, upon something she had observed outside the church environment, which was her discovery of the appellant reading the Farsi bible and making notes when Dr MN made an unannounced visit to her home. Neither Dr MN's opinion evidence nor her factual evidence was logically undermined by the judge's concern about her ignorance (or claimed ignorance) of the outcome in another appeal.

31. Ms Jones primarily advanced this ground of appeal as a rationality challenge to the judge's conclusion and we accept the submission advanced in that way. We also accept the submission that the judge gave inadequate reasons for concluding that the weight to be attached to Dr MN's evidence of the appellant's conversion was reduced on account of the "unsatisfactory" nature of her evidence in another respect. It does not necessarily follow that the evidence of a witness is to be discounted altogether because their evidence is found to be unsatisfactory in one respect. As Lord Dyson explained in MA (Somalia) v SSHD [2010] UKSC 49; [2011] 2 All ER 65, the significance of lies may vary from case to case. The same must equally apply in circumstances in which a witness gives evidence which is in one respect unsatisfactory, so that it is necessary for a judge to explain how and why that concern bears upon the remaining evidence given by the witness. We do not consider the process of reasoning in [32](v) to discharge that obligation adequately or at all. The basis upon which the judge discounted the evidence from Dr MN was legally flawed. His concern regarding Dr MN's evidence contributed materially to his decision to discount the written evidence given by the other witnesses from the church. In the circumstances, we consider that the judge's rejection of the supportive evidence from the church was erroneous and cannot stand.

32. It follows that we find Ms Jones's third submission to be made out. That conclusion necessarily results in the judge's assessment of the appellant's conversion being set aside as a whole, notwithstanding our rejection of Ms Jones's first and second submissions.

33. We do not consider that the judge's comparatively brief analysis of the appellant's claim in the alternative is capable of rendering his legal error immaterial. The position in that respect is to be contrasted with that in OK (PTA; alternative findings) Ukraine [2020] UKUT 44 (IAC). As submitted by Ms Jones, the judge's analysis does not appear to have been undertaken fully in the alternative. If, contrary to the judge's primary finding, the appellant is a Christian convert who has been publicising her genuinely held beliefs on the internet, she cannot properly be expected to delete those posts before she returns to Iran. To expect her to do so would be contrary to HJ (Iran) and RT (Zimbabwe) and anathema to the Refugee Convention. The judge's consideration of the appellant's internet activity and the risk arising from that activity was undertaken entirely on the basis of his earlier finding that the appellant's conversion was not genuine. In the circumstances, the proper course is for the entirety of the FtT's analysis to be set aside and for the appeal to be reheard *de novo.*

34. We have intentionally confined our analysis to the appellant's third submission, and have not based our conclusion on either the decision of the Inner House of Session in TF & MA v SSHD [2018] CSIH 58 or the Administrative Court in R (on the application of SA (Iran)) v SSHD [2012] EWHC 2575 (Admin). The former decision is obviously only persuasive in England and Wales. The ratio of the latter is not binding on the Upper Tribunal: Gilchrist v HMRC [2014] UKUT (TCC); [2015] 1 Ch 183.

35. We did not hear full argument on these authorities but we do consider it appropriate to sound a note of caution about their effect The evidence given by 'church witnesses' such as Dr MN in this appeal doubtlessly has a role to play in such cases. That has been recognised consistently in reported decisions including SJ (Iran) [2003] UKIAT 158. Such witnesses are able to provide factual evidence about a claimed convert's attendance at church and their other activities as a Christian. They are also able to provide their opinion as to whether the individual has genuinely converted to Christianity. The rules of evidence do not apply in the Immigration and Asylum Chamber and it is permissible for a lay person to give their opinion on such matters: rule 14(2)(a) of the Tribunal Procedure (FtT)(IAC) Rules 2014.

36. In TF & MA, the Inner House of Session found that the FtT had erred in law in its approach to the evidence given by members of the appellants' church, the Tron Church in Glasgow. As is clear from [45]-[50] and [60]-[63] of the court's opinion, the error into which the judges of the FtT were held to have fallen was to disregard the evidence given by members of the Tron Church because the appellants had been found to be dishonest in other matters underpinning their claims for asylum. What the FtT judges had failed to do was to look at all the evidence in the appeals, including the evidence from the Tron Church witnesses, on its own merits, before forming a concluded view as to the credibility of the appellants' conversion, thereby failing to

adopt the holistic approach required by Karanakaran v SSHD [2000] 3 All ER 449: [50] of the court's opinion refers. The Upper Tribunal had also erred, the court held, in failing to recognise these errors. It was for that reason that the court allowed the appeals, set aside the decisions under appeal and remitted the appeals to the FtT for rehearing *de novo*.

37. At [52]-[59], Lord Glennie (who delivered the opinion of the court) also explained why aspects of the evidence given by members of the Tron Church were to be treated as expert evidence which was entitled to respect. This section of the court's decision was not essential to the disposal of the appeals and is accordingly *obiter*. For our part, we respectfully doubt that evidence given by members of a church as to the genuineness of an individual's conversion can properly be described as expert evidence, for the following reasons.

38. At [43]-[44] of Kennedy v Cordia (Services) LLP (Scotland) [2016] UKSC 6; [2016] 1 WLR 597, the Supreme Court approved a section of the South Australian decision in R v Bonython (1984) 38 SASR 45, from which it distilled four key considerations which governed the admissibility of expert evidence (which in Scots law is known as "skilled evidence").

> "(i) whether the proposed skilled evidence will assist the court in its task;
> (ii) whether the witness has the necessary knowledge and experience;
> (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and
> (iv) whether there is a reliable body of knowledge or experience to underpin the expert's evidence."

39. As we have already stated, no question of admissibility arises in the IAC but these criteria are nevertheless relevant in deciding whether evidence is properly described as 'expert evidence'. Assuming for present purposes that the first three requirements are satisfied in the case of a witness such as Dr MN, we very much doubt that her evidence satisfied the fourth requirement. The court in TF & MA did not expressly address the guidance given by the Supreme Court in Kennedy v Cordia on this fourth requirement. At [54]-[56], Lord Reed and Lord Hodge (with whom the other Justices agreed), considered the authorities in which the requirement for there to be a reliable body of knowledge or experience had been analysed. Amongst other authorities, Mearns v Smedvig Ltd 1999 SC 243 was cited, in which Lord Eassie had said:

> "A party seeking to lead a witness with purported knowledge or experience outwith generally recognised fields would need to set up by investigation and evidence not only the qualifications and expertise of the individual skilled witness, but the methodology and validity of that field of knowledge or science."

40. In many cases, it will be apparent that the methodology and validity of a field of knowledge or science is such that it can validly underpin expert evidence. It is well established in the field of refugee status determination, for example, that a suitably qualified doctor can provide expert evidence on the likely causes of physical lesions on a claimant's body, in compliance with the Istanbul Protocol: KV (Sri Lanka) v SSHD [2019] UKSC; [2019] 1 WLR 1849. Expert evidence regarding an individual's mental health is also frequently received in international protection appeals, documenting diagnoses made by the application of diagnostic criteria such as the ICD-10 or the DSM-V: TD & AD (Albania) CG [2016] UKUT 92 (IAC). In Kennedy v Cordia itself, it was accepted that a consulting engineer with a degree in engineering and a diploma in safety and hygiene who was, amongst other things, a former member of the Health and Safety Executive, was properly able to provide expert evidence on a range of matters concerning the precautions which might properly have been taken to prevent the appellant's wrist injury.

41. The position in respect of an individual's conversion to Christianity is to be distinguished from these paradigms. There is no recognised methodology by which the genuineness of an individual's conversion from one faith to another can be measured, nor can that question properly be categorised as belonging to a field of knowledge or science. A witness such as Dr MN believes that an individual has converted to Christianity and they can provide reasons for that belief but there is no established methodology by which they reach that conclusion. Their evidence on this issue (described by Lord Glennie as "Category 3" evidence) should not, in our judgment, be described either as expert evidence or even as "a species of expert evidence", as was submitted by leading counsel for the appellants in TF & MA: [41] refers. To describe such evidence as expert evidence risks elevating the significance of that evidence unduly. An example of that risk coming to pass can be seen in the submission made at [3] of the appellant's grounds of appeal, where it is said that "the evidence of the witness should have been treated as expert evidence by the Judge and afforded significantly more weight".

42. In fact, if one reads Lord Glennie's opinion closely, it is plain that he would not endorse that submission, even though he categorised the evidence of the laypeople from the Tron Church as expert evidence. At [59], he emphasised that their evidence was no more than:

> "admissible opinion evidence which is entitled to respect. Of course, it remains for the court or tribunal to make the final decision, and nothing in the expert evidence can take that away from the court or tribunal".

43. "Respect" is not the same as weight. Judicial fact finders commonly decline to ascribe significant weight to expert evidence for a wide range of entirely legitimate reasons.

44. There is, in fact, a further reason why the written and oral evidence given by individuals such as Dr MN should not be described as expert evidence. An expert's evidence is to be provided to the Immigration and Asylum Chamber in compliance with the Practice Directions of the First-tier Tribunal and the Upper Tribunal, as amended by Sullivan LJ on 13 November 2014. Paragraph 10 of the PD imposes a significant range of obligations upon an expert witness and upon those instructing them. The weight which can properly be attached to the evidence of an expert might properly be reduced in the event of a failure to comply with those stipulations: SS (Sri Lanka) v SSHD [2012] EWCA Civ 155 and AAW (expert evidence – weight) Somalia [2015] UKUT 673 (IAC). It would not be appropriate, in our judgment, to impose those obligations upon representatives who seek to enlist the assistance of church witnesses, or upon the church witnesses themselves. These witnesses are lay people who seek to give factual and opinion evidence on matters of faith and not experts who can properly be expected to comply with those obligations.

45. The judgment of Gilbart J in R (SA) v SSHD concerned the lawfulness of a decision made by the defendant that the claimant's claim to have converted to Christianity was clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002. The claimant had already been disbelieved as to her conversion by a judge of the First-tier Tribunal, who had formed a strongly adverse view of her credibility: [5]. Permission to appeal against that decision was refused and, in due course, the claimant made further submissions. Those submissions were supported by a raft of additional evidence, as listed by Gilbart J at [8]. That material concerned the truthfulness of the claimed conversion and the mental health of the claimant's son, which was said to have deteriorated after the dismissal of the appeal. Having reviewed the evidence, the defendant concluded not only that it did not cross the somewhat modest threshold presented by paragraph 353 of the Immigration Rules; she concluded that the claim was also clearly unfounded: [9].

46. Gilbart J reminded himself of the test to be applied by the Court in considering a challenge to a certified decision: [12]-[13]. He recalled the significance of the Devaseelan [2003] Imm AR 1 guidelines in a case which had previously been the subject of findings in the FtT: [14][-15]. At [16]-[20], Gilbart J concluded that it had not been open to the defendant to conclude that the expert psychiatric evidence in respect of the claimant's son could simply be set aside. It was for that reason that the defendant's decision to regard the claim as clearly unfounded was unlawful: [20].

47. Having observed that the conclusions summarised above were "enough to dispose of the case", Gilbart J added three observations in respect of the claimed conversion to Christianity. It is the third of those *obiter* observations which is most frequently cited in cases of this nature:

> "[24] Thirdly, there is a matter closely related to the second point of concern. What appears to have impressed the immigration judge, and then the Home Secretary, is that the Claimant's conversion to Christianity was not regarded by him as genuine, and had been manufactured to assist her asylum claim. It is a dangerous thing for anyone, and perhaps especially a judge, to peer into what some call a man or woman's soul to assess whether a professed faith is genuinely held, and especially not when it was and is agreed that she was and is a frequent participant in church services. It is a type of judicial exercise very popular some centuries ago in some fora, but rather rarely exercised today. I am also uneasy when a judge, even with the knowledge one gains judicially in a city as diverse as Manchester, is bold enough to seek to reach firm conclusions about a professed conversion, made by a woman raised in another culture, from the version of Islam practised therein, to an evangelical church in Bolton within one strand of Christianity. I am at a loss to understand how that is to be tested by anything other than considering whether she is an active participant in the new church. But I accept that such judicial boldness as this judge showed does not necessarily undermine a decision in law if he does so, and his decision was not successfully appealed. But that is not the only point. There must be a real risk that if she has professed herself to be a Christian, and conducted herself as one, that profession, whether true or not, *may* be taken in Iran as evidence of apostasy. On the basis of the Home Secretary's now stated position, that amounts to a potentially different circumstance from that addressed by the Immigration Judge." [emphasis added]

48. We do not understand Gilbart J to have suggested that it is impermissible as a matter of law for a judge who is tasked with assessing a claimed religious conversion to consider anything other than whether the individual is an active participant in the church. That he did not intend to suggest as much is clear, in our judgment, from the final sentence which we have underlined. Insofar as this paragraph is relied upon by representatives in support of a submission that active participation in church activities suffices, without more, to demonstrate the truthfulness of a conversion, we do not consider that to be the position. On the contrary, it is entirely permissible for a judge in a case of this nature to turn his mind to a whole range of additional considerations, including not least the timing of the conversion, the individual's knowledge of the faith, and the opinions of other members of the congregation as to the genuineness of the conversion.

49. We are conscious that the opinions we have expressed above are *obiter* but we consider it necessary to express them, since it is the experience of both

members of this Tribunal that TF & MA and R (SA) v SSHD are frequently cited in cases of this nature.

The Respondent's Appeal

50. Having heard argument on the appellant's grounds of appeal, we invited both representatives to make submissions on the respondent's appeal. Ms Jones accepted at the outset – as we have already recorded – that it had been the judge's intention to dismiss the appeal on all grounds. To that extent, the respondent's appeal was not opposed by the appellant.

51. We nevertheless invited the representatives to make submissions on the procedure which should be adopted in a case such as this one, in which it is clear that the final decision of the FtT does not accord with the reasons given by the judge. Both parties had filed and served skeleton arguments in advance, although the respondent's skeleton understandably dealt with this point more fully than Ms Jones's. We drew the parties' attention to the judgments in Bristol-Myers Squibb Co v Baker Norton Pharmaceuticals Inc (No 2) [2001] EWCA Civ 414; [2001] RPC 45 and Santos-Albert v Ochi [2018] 4 WLR 88 and to paragraph 40.12 of the White Book; and we gave the advocates sufficient time to familiarise themselves with these materials.

52. Ms Cunha relied upon the grounds of appeal and the skeleton argument which had been settled by Mr Clarke. The respondent maintained that the correct course of action, in circumstances such as those in the present case, was for the FtT to correct the decision under the 'slip rule'. The obvious typographical error in the judge's decision was plainly amenable to such correction and Katsonga [2016] UKUT 228 (IAC) was wrongly decided insofar as it suggested otherwise. AS (Afghanistan) v SSHD [2019] EWCA Civ 208; [2019] 1 WLR 3065 supported the respondent's stance in that regard. The correction of errors in that way was fair to both sides and ensured that all parties understood where they stood with the minimum delay and expense. To adopt such an approach would also be consistent with the overriding objective. On proper analysis, Bristol-Myers Squibb v Baker Norton favoured this construction of the slip rule, as did one of the other authorities cited in the White Book, Markos v Goodfellow [2002] EWCA Civ 1542. All of the authorities underlined that the slip rule could be used to correct a judgment so as to give effect to the original intention of the judge.

53. It was preferable, Ms Cunha submitted, for errors such as this to be corrected under rule 31 rather than under rule 35 (review of a decision). For that rule to apply, it was necessary for there to be an application for permission to appeal and that route was unnecessarily cumbersome and time-consuming when the typographical nature of the error was recalled.

54. We are grateful to Ms Jones for her considered response. As she made clear throughout the hearing, her lay client fully understood that the respondent's

complaint was meritorious and it was only the success or failure of the appellant's grounds of appeal with which she was principally concerned. Nevertheless, she assisted the Tribunal with her analysis as a member of the Bar who practises extensively in this field.

55. Ms Jones's considered position was in support of the Secretary of State's construction of the slip rule. She expressly agreed with Ms Cunha that the authorities suggested that the slip rule could be used in the circumstances under contemplation and she too submitted that Katsonga should not be followed. She agreed with the respondent that it was in the best interests of all parties to use the slip rule to correct an obvious error and she submitted that this would be of particular assistance to claimants themselves, who were positively disadvantaged by a lack of clarity in decisions which were likely to be written in a language which was not their own.

56. It would be preferable and more in accordance with the over-riding objective, Ms Jones submitted, for errors of this kind to be corrected under the slip rule, rather than it being necessary for the FtT to be presented with an application for permission to appeal. The Upper Tribunal had been wrong in Katsonga to conclude that it would alter the 'substance of the decision' to change the concluding words. The substance of the decision, as described in the authorities, was not whether the appeal was allowed or dismissed; the substance of the decision was to be found in the reasoning of the judge. What was clearly not permissible under the slip rule was for the substance of the decision to be altered but what clearly was permissible under that Rule, whether under the CPR or the IAC Rules, was for a decision to be amended so as to give effect to the plain intention of the judge.

Analysis of the Respondent's Appeal

57. The respondent's grounds of appeal are as concise as one would expect, given the nature of the error into which it is accepted that the judge fell. It was submitted that the concluding words of the judge's decision did not reflect his intention. It was noted that Katsonga precluded the respondent from asking the First-tier Tribunal to use the 'slip rule' in rule 31 to correct the decision. Permission to appeal was accordingly sought.

58. In granting permission to appeal, the First-tier Tribunal Judge noted that the end of the decision stated that the appeal was allowed on asylum grounds but that "it is clear from the body of the determination that the intention was to dismiss the appeal on all grounds". The judge considered that this was "arguably a material error of law". We disagree. It was obviously an error of law, since the concluding words of the decision could not conceivably have reflected the intention of the judge.

59. As a result of Katsonga, the judge who considered the application for permission to appeal cannot be faulted for not turning his mind to rule 31 of

the Procedure Rules ("the slip rule"). The respondent had quite properly explained in her application for permission to appeal why she had not, as a result of that decision, invited the Tribunal to take corrective action under that rule. What is of concern, however, is the fact that the judge who considered the application for permission to appeal did not turn his mind to section 9 of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act") and rule 35 of the Procedure Rules, pursuant to which the FtT has power to review its own decision. Rule 35 is in the following terms:

> **35. Review of a decision**
>
> (1) The Tribunal may only undertake a review of a decision—
>
> (a) pursuant to rule 34 (review on an application for permission to appeal); and
>
> (b) if it is satisfied that there was an error of law in the decision.
>
> (2) The Tribunal must notify the parties in writing of the outcome of any review, and of any right of appeal in relation to the outcome.
>
> (3) If the Tribunal takes any action in relation to a decision following a review without first giving every party an opportunity to make representations—
>
> (a) the notice under paragraph (2) must state that any party that did not have an opportunity to make representations may apply for such action to be set aside; and
>
> (b) the Tribunal may regard the review as incomplete and act accordingly.

60. By rule 36, the FtT may treat an application for a decision to be corrected, set aside or reviewed, or for permission to appeal against a decision, as an application for any other one of those things. The value of rule 35 has been underlined by the Upper Tribunal in Thapa [2018] UKUT 54 (IAC); [2018] Imm AR 724, at [38]-[44]. In Thapa, the First-tier Tribunal Judge had evidently proceeded on a material misapprehension of the facts, in that his attention had not been drawn to the fact that attempts had been made to secure an adjournment on the basis that counsel and the sponsor were both unwell on the day of the hearing. In the circumstances, it was readily apparent that the judge had erred (albeit not through any fault of his) when he had concluded that the appellant had shown no interest in the appeal. At [43], the Upper Tribunal stated that the First-tier Tribunal could have issued a review decision, finding that the FtT had clearly erred in law, setting aside that decision and requiring the decision to be remade. At [44], the decision concluded with the following:

> "This case is, in short, a good example of the usefulness of the power of review in section 9. Instead of granting permission to appeal, with its attendant inevitable delay, recourse to review would have meant the appeals would have been re-heard, in all probability long before December 2017, without the Upper Tribunal being involved."

61. The instant appeal provides an equally good example of the usefulness of the power of review. The decision of the FtT was issued in August 2019. The respondent's appeal was lodged in early September. Permission to appeal was granted later that month. The appeal came before the Upper Tribunal in January 2020. The more expeditious course would have been for the FtT to write to the parties, indicating that its provisional view was that there was an obvious error of law in the decision, in that the final words of that decision did not accord with the judge's reasoned conclusions. The parties could have been given an opportunity to make representations, which need not have been any longer than a few days. No competent representative faced with that indication could have objected to the Tribunal's provisional view.

62. After a short delay, the First-tier Tribunal could have reviewed the decision, issuing an amended decision in which the concluding words reflected the body of that decision. That course would have avoided the additional delay and expense involved in an appeal to the Upper Tribunal. It would also have been likely, as emphasised by Ms Jones and Ms Cunha, to bring about greater certainty for the appellant. Her first language is not English and she was in receipt of a closely reasoned decision of thirteen pages, which concluded with an indication that she had succeeded on asylum grounds. There is obviously a risk in such circumstances, particularly when a litigant is unrepresented, that the concluding words of such a decision might lead an appellant to think that they had been successful in their appeal. They might, as a result, fail to take advice on the body of the decision and find themselves in difficulty if, at a later stage, it becomes apparent that they would have wished to seek permission to appeal against the body of the decision. Thankfully, the appellant in the instant appeal did not find herself in such a situation but it is easy to conceive of an appellant who receives a decision which ends with the words "Asylum Appeal: allowed" deciding to take no further action. Removing that risk promptly by treating such an application for permission to appeal as another type of application, pursuant to rule 36, is in the interests of justice.

63. Having concluded that the FtT could have acted under rule 35 in a case such as the present, we turn to consider the course of action which was thought to be precluded in Katsonga: the correction of the decision under rule 31 of the Tribunal Procedure (FtT)(IAC) Rules 2014.

64. Paragraph 15(1) of Schedule 5 to the 2007 Act provides that rules may make provision for the correction of accidental errors in a decision or record of a

decision. In the First-tier Tribunal (IAC), that provision is to be found in rule 31, which is in the following terms:

> **"31. Clerical mistakes and accidental slips or omissions**
> The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by—
>
> (a) providing notification of the amended decision or direction, or a copy of the amended document, to all parties; and
>
> (b) making any necessary amendment to any information published in relation to the decision, direction or document."

65. The broadly equivalent provision in the Civil Procedure Rules is to be found in rule 40.12(1) ("Correction of errors in judgments and orders") which provides that "The Court may at any time correct an accidental slip or omission in a judgment or order".

66. In Katsonga, a judge of the First-tier Tribunal had given reasons for concluding that the appellant's removal would not breach the Refugee Convention or the European Convention on Human Rights and that she was not in need of Humanitarian Protection. The judge had concluded her decision by stating that the appeal was "refused" on asylum and humanitarian protection grounds but "allowed on human rights grounds".

67. Both parties made applications for permission to appeal. As set out at [4] of the Upper Tribunal's decision, the respondent's application was premised on a submission that the judge's decision on human rights grounds was a "slip of the pen" which was amenable to the slip rule. This application was brought to the attention of the Resident Judge, who arranged for the judge's decision to be corrected under the slip rule and re-issued, reflecting his original intention to dismiss the appeal on all grounds.

68. The appellant then lodged a second application for permission to appeal, containing the original grounds of appeal and an amended ground, objecting to the use of the slip rule at the request of the Secretary of State. Drawing on the authorities cited at 40.12.1 of the White Book, the Upper Tribunal concluded that the slip rule could not be used to change the substance of a judgment or order and that the rule could not be used to reverse a decision at the instance of the losing party: [9]-[10]. So it was that the Upper Tribunal concluded that there had been no jurisdiction to correct the decision under that rule, and that "the first determination is the determination of the First-tier Tribunal". Having reached that conclusion, the Upper Tribunal noted that it was agreed on all sides that the original decision could not stand, for the reasons identified in the grounds of appeal originally presented by both the appellant and the respondent. The decision

was accordingly set aside and remitted to be heard afresh by the First-tier Tribunal, with no findings of fact preserved.

69. Katsonga is cited as authority for the third sentence in paragraph 15.15 of the fifth edition of Jacobs' *Tribunal Practice and Procedure:*

> "The [slip rule] allows a decision to be corrected. It does not allow a decision to be changed from the one that the Tribunal intended to make, however substantial the mistake. It does not allow a decision to be reversed at the instance of the losing party. The court rule was used to allow the correction of oversights but this result is now achieved using the power to vary an order." [emphasis added]

70. In AS (Afghanistan) v SSHD [2019] EWCA Civ 208; [2019] 1 WLR 3065, the Court of Appeal considered an appeal against the Upper Tribunal's country guidance decision about the return of Afghan nationals to Kabul: AS (Safety of Kabul) Afghanistan CG [2018] UKUT 18 (IAC). It had been submitted by the Secretary of State that only *about 0.1%* of the population of Kabul province would become civilian casualties in the year 2017-2018, and that the security situation should be viewed in that context. At [106] and [196] of its decision, however, the Upper Tribunal made reference to *less than 0.01%* of the population of Kabul suffering death or injury in the same period. It was accepted on both sides that the lower figure did not reflect the submission made; that there was no support for it in the evidence; and that it was simply an error. The error was not clearly identified in the application for permission to appeal which was made to the Upper Tribunal. It was clearly identified in the skeleton argument which accompanied the grounds of appeal to the Court of Appeal.

71. In the course of his judgment, Underhill LJ considered at some length the submission made by leading counsel for the Secretary of State, which was (in summary) that the reference to 0.01% of the population was clearly a typographical error in the decision of the Upper Tribunal and that such an error was amenable to the slip rule. (Rule 42 of the Upper Tribunal's Procedure Rules is in precisely similar terms to rule 31 of the FtT's Rules.) Underhill LJ concluded that the Upper Tribunal would have jurisdiction to correct the error in its decision if it was a mere error of expression but that it would not be right for it to exercise that jurisdiction in the particular circumstances of that case: [47]. Newey and Nicola Davies LJJ agreed, for separate reasons given at [48]-[53] and [54]-[55] respectively. In the course of his leading judgment, Underhill LJ made reference to Katsonga at [45]. His citation of that decision was accompanied by an endnote in which he said:

> "Note 7 My citation of *Katsonga* should not be taken as implying approval of the proposition in the judicially-drafted headnote that "the 'Slip Rule'… cannot be used to reverse the effect of a decision", which if taken out of context may be misleading. If, say, a "not" were

> accidentally omitted from a declaration or injunction its correction might well reverse what would otherwise be the effect of the decision, but it is hard to see why it should for that reason be illegitimate: indeed it might be thought to be the paradigm of the kind of case for which the slip rule was required."

72. Those remarks, read with the what the Court had to say in general about the power to correct a "formal decision", mean that it is necessary to revisit Katsonga. In doing so, we have had the benefit of argument and the citation of authorities, which the Tribunal in Katsonga did not enjoy.

73. We respectfully take a different view about the effect of the decision of the Court of Appeal in Bristol-Myers Squibb v Baker Norton Pharmaceuticals, which was cited in Katsonga in support of the conclusion that the power conferred by CPR 40.12 could not be used to change the substance of a judgment or order. In so holding, the Upper Tribunal mirrored the commentary in the White Book. The critical distinction drawn by Aldous LJ (with whom Laws LJ and Blackburn J agreed), however, is to be found at [25]:

> "Those cases establish that the slip rule cannot enable a court to have second or additional thoughts. Once the order is drawn up any mistakes must be corrected by an appellate court. However, it is possible under the slip rule to amend an order to give effect to the intention of the Court."

74. Aldous LJ therefore drew a distinction, as the rest of his judgment shows, between two broad categories of case. In the first, which are described in the judgment as 'second thoughts' cases, a party or a judge seeks to make an impermissible amendment to a perfected judgment or order in order to correct a legal error or to alter his reasons. R + V Versicherung A.G. v Risk Insurance and Reinsurance Solutions SA [2007] EWHC 79 (Comm) falls into that category because the alterations proposed to the judge's orders concerned challenges to the judge's judgment. So too does Secretary of State for Trade and Industry v Rogers [1996] 1 WLR 1569, since the judge in that case had intentionally inserted a finding of dishonesty into his perfected judgment; such a finding having been absent from the *ex tempore* judgment and beyond the scope of the Secretary of State's case. The Court of Appeal in that case held that the slip rule could not be used to excise the relevant sentences from the judgment, since their addition to the perfected judgment had been "deliberate and intended": p1577H refers. The Court of Appeal therefore declined to use the slip rule to delete the offending words, deciding instead to set aside the finding on the basis that it was not open to the judge.

75. At the other end of the spectrum is the category of case in which a party or a judge seeks permissibly to amend a perfected judgment or order so as to give effect to the intention of the court. Bristol-Myers Squibb v Baker

Norton was such a case. A more recent example is to be found in Santos-Albert v Ochi [2018] EWHC 1277 (Ch); [2018] 4 WLR 88. In that case, a District Judge had used the slip rule to add the words 'the amount now owing' to a final charging order in respect of a property owned by the defendant. The District Judge had confirmed that the amended order was the one she had intended to make on the earlier occasion. The appellant's appeal against the application of the slip rule was dismissed by Snowden J. In rejecting the appellant's submission that the slip rule could not be used to make substantial amendments, he said this:

> "[27] I do not accept Mr Nicol's submission as to the meaning of CPR 40.12. Although CPR 40.12 uses the word "slip", its real purpose is to ensure that the order conforms with what the court intended, even if the error which has originally been made in drawing up the order is substantial. So, for example, if the court intended to order payment of £1,000,000 but in error the order drawn up by the court required payment of only £1,000, I do not doubt that the order could be amended under the slip rule, even though the financial difference between the order as drawn and the court's true intention would be very great. In my view, as stated in *Bristol-Myers Squibb*, the key requirement in every case is simply that the order should reflect the actual intention of the court. The limitation discussed in the authorities, and which I think is what is meant by the sentence in the White Book, is that there should genuinely have been an accidental error or omission: the slip rule should not be used to permit the court to have second or additional thoughts or to add a provision having substantive effect which was not in the contemplation of the parties or the court at the hearing."

76. We agree, and we consider these dicta to apply equally to the slip rules in the procedure rules of the IAC. We consider that construction to be supported by the examples given by Underhill LJ in the seventh endnote of AS (Afghanistan). The correction of a judgment or order by the addition or deletion of the word 'not' might well reverse the effect of a decision but might legitimately be thought to be the paradigm example of the type of case for which the slip rule was intended. The example given at 40.12.1 of the White Book, of the amendment of an order to refer to the claimant as opposed to the defendant would also have the effect of reversing its effect. Again, the fact that the amendment is 'substantial' or that it reverses the effect of the order matters not; the amendment is permissible because it gives effect to the plain intention of the Court. If a further example is required, it is to be found in Dickinson & Ors v Tesco & Ors [2013] EWCA Civ 226, in which the Court of Appeal used the slip rule to correct an order which failed accurately to reflect the judgment of the court.

77. Our conclusion in that regard also accords with the approach to the slip rule which is applied in the Administrative Appeals Chamber. The leading decision on the subject remains AS v Secretary of State for Work and

Pensions [2011] UKUT 159 (AAC), in which Upper Tribunal Judge Jacobs said this:

> [16] Rule 36 is by its contents a species of slip rule and should be interpreted in accordance with the nature of that type of provision. As such, it deals with matters that were in the judge's mind when writing but for some reason did not find their way onto the page. Typical examples are the typing error that produces the wrong date or a momentary lapse of concentration that results in the word 'not' being omitted. The rule does not cover matters that the judge had planned to mention but forgot to include. Obviously, it is difficult for the Upper Tribunal to know what was in the judge's mind, but the extent of the changes are an indication. It is difficult to classify the omission of a total of nine lines of explanation as in the same category of mistake as a typing error or a momentary lapse of concentration. For that reason, I decide that the changes made by the presiding judge were not authorised by rule 36."

78. Applying our analysis to a case such as the present, we come to the clear conclusion that the slip rule may be used in order to correct an accidental slip in the section of a judge's decision entitled or otherwise comprising the 'Notice of Decision', even where the correction would 'reverse' the effect of the decision. To conclude otherwise, on the basis of the current authorities, would be to deprive the slip rule of the purpose recognised in those authorities, of ensuring that the decision which is issued to the parties is truly reflective of the intention of the judge. By "a case such as the present", we mean a case in which it is absolutely clear that the judge intended either to allow or dismiss the appeal but in which the concluding words of the decision do not reflect that intention.

79. There will be applications for permission to appeal pending before the FtT in which errors of this kind have been made. A judge of the FtT who considers such an application, whether from an appellant or from the Secretary of State has three options. They may grant permission to appeal. They may review the decision under rule 35, as we have considered above. Or they may use the slip rule to correct the decision, so as to reflect the intention of the judge. Like the advocates before us, we consider the last option to be the most expeditious and the most likely to further the overriding objective. Rule 36 provides the mechanism by which an application for one of these forms of relief might properly be considered as an application for another.

80. For the future, a party to an appeal who considers there to be an error such as occurred in the present case should write to the Resident Judge of the hearing centre in question, asking for the typographical error to be corrected under rule 31 of the Procedure Rules. The error may (as permitted by [2] of the Practice Statement of the Immigration and Asylum Chambers) be corrected by the Resident Judge or by the judge who issued the decision. That is likely to be a matter for the Resident Judge, and their decision is

likely to be influenced, in particular, by the availability of the judge to attend to correct the error. In the event that there is any ambiguity as to the intention of the judge, the slip rule should not be used. In that eventuality, the application to correct may be treated (under rule 36) as an application for permission to appeal, leading to review of the decision or to the grant or refusal of permission. In the event that the judge declines to treat the application in this way, the parties may, if so advised, pursue alternative avenues of redress. In the event that there is no ambiguity, the decision may be corrected and re-issued to the parties in accordance with rule 31(a).

81. Returning to the present case, we find as follows. The judge of the First-tier Tribunal erred in law in purportedly allowing the appeal when it was his plain intention to dismiss it. The judge also erred in law in his treatment of the evidence from the witnesses from the appellant's church, and Dr MN in particular. The decision of the First-tier Tribunal is set aside accordingly and we order that the appeal be remitted for hearing *de novo* by another judge of that Tribunal.

Notice of Decision

The decision of the First-tier Tribunal was vitiated by legal error and is set aside. The appeal is remitted to the First-tier Tribunal for hearing afresh by a judge other than Judge Clegg.

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 the appellant 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.

MARK BLUNDELL
Judge of the Upper Tribunal (IAC)

18 April 2020