



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

Appeal Number: AA/00119/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12th September 2017**

**Decision & Reasons Promulgated
On 14th September 2017**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

**F B
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Braganza of Counsel, instructed by Migrant Legal Action

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

Interpretations:

Mr M Ghorani in the Farsi language

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iran born in 1974. She arrived in the UK on 27th February 2012 and claimed asylum the same day. She was refused asylum in March 2012, and appealed against that decision.

That appeal was dismissed on all grounds in June 2012 in a decision of Judge of the First-tier Tribunal Lever, and she became appeal rights exhausted on 24th May 2013.

2. In May 2013 the appellant was baptised and confirmed into the Mormon church in Bolton. On 9th September 2013 the appellant made further asylum submissions based on a fear of return to Iran on religious grounds due to her conversion from Islam to Christianity, and was interviewed with respect to these submissions on 23rd November 2015. On 16th January 2016 the respondent refused this fresh claim. Her appeal against this decision was dismissed by First-tier Tribunal Judge M Davies in a determination promulgated on the 10th October 2016.
3. Permission to appeal was granted by Judge of the First-tier Tribunal Page on 23rd November 2016 on the basis that it was arguable that the First-tier judge had erred in law in conducting a procedurally unfair hearing due to a perception that he was biased against Iranian asylum seekers. It was also found to be arguable that the First-tier Tribunal Judge found that the bishop and former bishop of the Mormon Church and had an “overriding desire” to increase the size of their church membership, and in turn that this was not a finding based on evidence.
4. For the reasons set out in the decision appended at Annex A I found that the First-tier Tribunal had erred in law and set the decision aside. This is the remaking of the appeal.

Evidence and Submissions - Remaking

5. In summary, the appellant’s evidence in her written statements and in oral evidence, given through the Tribunal interpreter (whom she confirmed she could understand), is as follows. She has always been a religious person. She was a practising Muslim in Iran. She was forced to flee from Iran in February 2012, and when in the UK at the end of April 2012 met a woman called LJ from an organisation called Brass in Bolton. LJ encouraged her to go to her church, the Bethel Evangelical Church in Bolton, as she was sad and stressed by her situation in the UK. The appellant found attending church moving and calming, and was able to understand a little from other Farsi speakers in the congregation. She also got a Farsi version of the Bible from their library with the help of Father Nigel. She began to attend weekly prayer meetings and socialise over lunch on the second Sunday of the month. The appellant’s sons also attended sometimes. She did not know the address but would meet LJ in Bolton city centre and walk to the church with her. The appellant did not discuss her Christianity with her first solicitor as she had not changed her religion at that time and that solicitor did not ask about this matter.

6. The appellant's sons, IN and EN, met missionaries from the Bolton Church of Jesus Christ of Latter Day Saints in March 2013, both of whom she believed were American. Her sons became more engaged with Christianity from this time, and the Mormon church was nearer to the appellant's accommodation. Her sons brought home a Farsi translation of the Bible. One of the missionaries wanted to baptize the whole family, and the appellant liked the idea. At this new church the appellant felt she had a better understanding of Christianity. The church was also closer, being directly opposite their accommodation. The appellant was also assisted by other people from the church including Tony when they lost their NASS accommodation. She also understood that as Mormons there were two other holy books to follow other than the Bible: the Book of Mormons and the Book of Rules for Mormons to follow. She and her sons were baptised on 18th May 2013 and confirmed on 26th May 2013, and her sons have been ordained into the priesthood. The appellant believes she gave a proper understanding of Mormon dietary rules, not drinking tea, coffee or alcohol at her interview.
7. The appellant's son, IN, called his father after his baptism and shared their conversion with him. It seems that as a result of this call the authorities knew about the family's conversion in the UK, and raided the appellant's parents' home as that was where her husband had been living and found Christian material there. At this point the appellant's husband left this home. Both families rejected the appellant and her husband at this point. Her husband, SMN, left Iran for Turkey and was baptised into the Christian Iranian church in Turkey in January 2014, and recognised as a mandate refugee by UNHCR in that country in September 2014. He lives in Elazig in Turkey, and attends a house church. She is in regular contact with her husband.
8. The appellant had three weblogs she had written about her political and religious views. The authorities have closed down two of them. She has also shared her views on these matters on Facebook. The appellant has suffered from depression for the past four years and takes medication for this condition, and has not pursued these weblogs recently.
9. The appellant then changed to attend the Mormon Church in Rochdale in November 2013 due to a further change in her address as a result of her NASS support. She has now been attending this church since that time. She does not know the address but can walk there. The appellant's English remains somewhat limited but her sons, who also attend with her, speak well. She can communicate with others in English using simple sentences however.

10. The appellant maintains that she has truly converted to Christianity and practices her religion privately and publicly. She reads the Bible before bed; attends group prayer at church; and prays for friends. She fasts on the first Saturday of every month. She attends church on Sundays. She does not drink tea, coffee or alcohol. She volunteers with children in the church nursery, assisting the teachers. At interview the appellant was able to refer to her favourite Bible story in Matthew, and offered to look it up for the interviewer but was told this was not necessary.
11. The appellant and her sons have all given her husband's name from the time they arrived in the UK as SMN. The respondent has also written to the UNHCR in Turkey on 29th January 2015 stating that his wife is an asylum seeker in the UK. The appellant does not believe she can join her husband, who is a UNHCR recognised refugee in that country, and also comments that he cannot be open about his Christianity as there is a majority Muslim population in Turkey. Her son, EN, has also recently won his appeal before the Upper Tribunal, which was allowed on refugee and human rights grounds on 21st June 2017.
12. The appellant believes that her family and her husband's family blame her for the conversion of the family, and see her as an apostate, and that her life would also be at risk if she were to try to join her husband in Turkey. She is however in some secret contact with her mother occasionally. The rest of her family have disowned her as they are under pressure from wider family.
13. Mr Frank James Smith attended the Tribunal and gave oral evidence. His written and oral evidence is, in summary, as follows. He has known the appellant since November 2013 as he is the Mormon bishop of the church she attends in Rochdale. He is a British citizen and owns an architectural firm in Rochdale. He has seen her regularly once a week over this time. The appellant almost always attends worship on Sundays and assists Ms Hutton with the younger children with their activities after the main service. He communicates with the appellant in English. The appellant also helps out with other church and community activities. The appellant attends church generally with her sons. He believes that they are all genuine Christians; that she genuinely enjoys attending church; and that she and her sons are a lovely and honest family.
14. Ms Sharon Hutton attended the Tribunal and gave oral evidence. In her written and oral evidence she says in summary, as follows. That she is a British citizen who has been a Mormon most of her life. She has known the appellant for about three years, and that they communicate in English. That appellant continues to attend the Rochdale Mormon church, and assist with supporting the teachers who teaches the 3 -5 year old children, and regularly

attends church on Sundays with her two sons. She gives evidence that the appellant attended a pageant put on by the Mormon church in Chorley. She believes the appellant to be sincere in her faith, and to be observant of the Mormon rules such as not drinking tea and coffee. She also confirmed that she has provided photographs of the appellant at the Mormon Church in Rochdale with the children, and on religious outings.

15. In submissions for the respondent Mr Nath relies upon the reasons for refusal letter. In this letter the appellant's nationality and identity are accepted by the respondent. It was not accepted however that the appellant had genuinely converted to Christianity as she was unable to give the addresses of the churches she had attended; had been inconsistent as to whether the two missionaries her sons had encountered were both American; she had failed to give a full account of the Mormon abstinence rules at her interview as compared to her statement; because Mormon Bishop Frank James Smith had said she was able to speak English well, whereas she said she did not speak English well; and because she could not name the place in the Bible of her favourite Bible story. Further there was no evidence about her weblogs and no evidence that SMN is her husband. As it was not accepted that the appellant is a genuine convert to Christianity it is not accepted that she would be at risk on return to Iran, or that she had any other basis to remain due to her ill health or period of residence in the UK.
16. Mr Nath added further submissions arguing that the appellant is not credible based on the fact that the appellant was unable to properly explain why she had not given all the things that Mormon's abstain from in response to the questioning at interview rather than just the drinks that they abstain from; and because of differences in what she claimed were the key Mormon texts between the appellant's oral evidence and what she had set out in her statement in 2013.
17. In submissions Ms Braganza for the appellant placed reliance on her skeleton argument. She drew attention to the fact that it was accepted by the respondent that the appellant had been baptised and confirmed into the Mormon Church in 2013 and attended the churches in Bolton and Rochdale, see paragraph 54 of the reasons for refusal letter. It was not accepted by the respondent that she attends regularly or that she is a genuine Christian convert.
18. Ms Braganza argued that the appellant had given entirely consistent evidence about her path to conversion and practice as a sincere Christian. The witnesses were also consistent with her evidence. At the most her history had a few instances where she had given more or less information at different points: there were no real discrepancies. The credible witness evidence supported the

appellant's history that she has attended church consistently and regularly since her conversion. UNHCR have also found her husband to be a refugee based on Christian conversion in Turkey. She has been absent from Iran since 2012, and will have to answer questions on arrival, if sent to Iran, which are likely to reveal that she has converted and attended church for the past four years, and at this point she will face a real risk of serious harm from the Iranian state. She therefore has a well founded fear of persecution.

19. The Upper Tribunal found her son EN to be a refugee in a decision dated 22nd June 2017, and the respondent has not appealed this decision and would now be out of time to do so, and as all family members are in the same position this is further evidence that the appellant's appeal should be allowed.

Conclusions - Remaking

20. I find that the appellant is a genuine convert to Mormon Christianity for the reasons I now set out below. It is accepted by the respondent that she was baptised and confirmed into the church in 2013, and that she attended both the Bolton and Rochdale churches. The evidence before me is that she has attended Mormon church with her sons on a very regular weekly basis for the past four years. I find both Mr Smith and Ms Hutton to be credible witnesses who gave heart felt evidence in a careful and helpful fashion straight forwardly answering the questions put to them. Their oral evidence was consistent with their written statement. They both were able to confirm that since November 2013 they had seen the appellant at church on Sundays with her sons on a weekly basis and seen her do additional church activities. Throughout this long period of time they gave evidence that they were both convinced that she was genuine in her conversion and an honest person. Ms Hatton's evidence was that the appellant lived her faith as well as professed it, and that she had heard from others how she had, for instance, abstained from tea and coffee with non-Mormon friends as well as following the rules within the congregation. In the cases of Dorodian (01/TH/01537) and SA (Iran) v SSHD [2012] EWHC 2575 it is emphasised that conversion should be evidenced by consideration of church membership rather than simple belief as this was what might lead to risk and because it is in any case the most rational way to assess whether such a conversion has taken place.
21. I accept that it is possible that the appellant was not entirely clear of the secondary holy books after the Bible and the Book of Mormon for the Mormon faith. The evidence was however confusing as the appellant had translated versions in Farsi and it is possible the names were slightly different in Farsi, and in any case the Tribunal interpreter made it plain he was uncertain how to translate them into English. It would seem that the appellant had a

beginners' explanatory book which she had probably included in the key texts. However, it was clear from her evidence that the appellant knew the primary importance of the Bible and the Book of Mormon and was actively engaging with the relevant religious literature, and was able to identify a favourite Bible story even if she could not give the precise place it was found. I do not find it at all significant that at interview she said that Mormons had to abstain from tea, coffee and wine, and thus gave a less complete answer than in her statement where she said tea, coffee, alcohol, smoking and sex outside of marriage. There was no suggestion that the appellant broke these rules in any way, and she plausibly explained that she had understood the interview question to be just about the rules relating to food and drink.

22. I find that the fact that the appellant had made a previous claim for asylum that had been found not to be credible; and only converted to Christianity at the point when that claim had been refused and the appeal dismissed means that I must approach this matter with care, as that starting point might indicate other motives for the conversion and that in accordance with Devaseelan I must take the previous First-tier Tribunal assessment that she was not a credible witness as my starting point. However, the evidence of the appellant's church commitment from witnesses whom I find to be credible and honest weighs heavily in her favour and leads me to find her also to be a credible witness with respect to the genuine nature of her faith and religious observance. It is also of some relevance that the appellant's husband has converted to Christianity in Turkey, and been recognised as a UNHCR mandate refugee in that country because it shows a family commitment to a similar Christian religious path, which adds to her credibility particularly given she confirms that the marriage remains intact despite their geographical separation. The respondent clearly accepted that the appellant was the wife of this refugee in correspondence, in writing to UNHCR that he could not join her here as she had no status at that time, and there is also his email evidence to the appellant.
23. The reported case law on Iran (SSH and HR v Secretary of State for the Home Department (illegal exit - failed asylum seekers) Iran CG [2016] UKUT 308, BA (Demonstrators in Britain - risk on return) Iran CG [2011] UKUT 36, and AB and Others (internet activity - state of evidence) Iran [2015] UKUT 257) finds that failed asylum seekers from Iran are likely to be questioned about what they have been doing in the UK and will be questioned on arrival regardless of whether they have a passport. It is clear from the decision in HJ (Iran) and HT (Cameroon) [2011] UKSC 596 that the appellant should not be expected to lie or to conceal a matter which was fundamental to her identity to avoid harm. I find if the appellant were to truthfully explain that whilst in the UK she had been baptised and confirmed into a Mormon Christian church and had

been worshipping in a Mormon Christian church regularly for the past four years that she would be subject, at the least, to further questioning and placed at a concurrent real risk of serious harm during this questioning, see evidence cited at paragraph 23 of SSH and HR.

24. As such I find that the appellant has a well founded fear of persecution based on her religion if returned to Iran, and is at real risk of treatment contrary to Article 3 ECHR for the same reasons.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal in its entirety.
3. I remake the appeal allowing the appeal on asylum and human rights grounds

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant, or her husband who is a recognised refugee in Turkey or her adult children who are asylum seekers in the UK, from the contents of her protection claim.

Signed: Fiona Lindsley
2017
Upper Tribunal Judge Lindsley

Date: 13th September

Annex A

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Iran born in 1974. She arrived in the UK on 27th February 2012 and claimed asylum the same day. She was refused in March 2012, and appealed against that decision. That appeal was dismissed on all grounds in June 2012 in a decision of Judge of the First-tier Tribunal Lever, and she became appeal rights exhausted on 24th May 2013.
2. In May 2013 the appellant was baptised and confirmed into the Mormon church in Bolton. On 9th September 2013 the appellant made further asylum submissions based on a fear of return to Iran on religious grounds due to her conversion from Islam to Christianity, and was interviewed with respect to these submissions on 23rd November 2015. On 16th January 2016 the respondent refused this fresh claim. Her appeal against this decision was dismissed by First-tier Tribunal Judge M Davies in a determination promulgated on the 10th October 2016.
3. Permission to appeal was granted by Judge of the First-tier Tribunal Page on 23rd November 2016 on the basis that it was arguable that the First-tier judge had erred in law in conducting a procedurally unfair hearing due to a perception that he was biased against Iranian asylum seekers. It was also found to be arguable that the First-tier Tribunal Judge found that the bishop and former bishop of the Mormon Church and had an “overriding desire” to increase the size of their church membership, and that this was not a finding based on evidence.
4. Directions for preparation of this hearing were issued by Upper Tribunal Judge Plimmer on 24th January 2017 and 22nd March 2017 which required a position statement from the respondent and all evidence to be provided to First-tier Tribunal Judge M Davies, and for him to provide any response he felt appropriate to that evidence.
5. The matter came before me to determine whether the First-tier Tribunal had erred in law. Judge M Davies did not choose to comment beyond providing his typed record of proceedings.

Submissions - Error of Law

6. In the grounds of appeal it is firstly contend that Judge M Davies conducted a hearing which created an appearance of bias in that he said on more than one occasion that “Iranians in particular use conversion to prevent removal”. In this connection Judge M Davies had not acknowledged that that the representative for the appellant, Ms Nollet, raised concerns about the “sweeping comments” about Iranians made at the hearing in submissions and that the exchange between Ms Nollet and Judge M Davies is misrepresented at paragraph 78 and 81 of the decision as the Judge failed to acknowledge what he had said and that Ms Nollet did not say she apologised for suggesting he was biased but simply said: “I apologise if my conduct offended you.” A formal complaint was made about the conduct of the hearing by Judge M Davies to the President of the First-tier Tribunal on 11th October 2016 and this complaint is being investigated.
7. The second ground is that Judge M Davies misdirected himself in law with respect to the impact of the previous decision of the First-tier Tribunal by saying at paragraph 85 of his decision that “the whole of the Appellant’s testimony is predicated on the findings made by Immigration Judge Lever”, when in fact he could have reached a new decision on her credibility based on the new evidence.
8. The third ground advanced by the appellant is that the decision misrepresents the evidence of Bishop Smith of the Mormon Church of Rochdale who said that in response to whether there are safeguards to check if a convert was genuine “It’s a hard church to be involved in in terms of commitment” not “it was hard for the church to be involved because of the level of commitment” as set out in the decision at paragraph 49 of the decision. Further it was erroneously not acknowledged that Bishop Smith also said that the appellant would have to have undergone lessons to be baptised in Bolton because: “That’s the protocol. You cannot be baptised without and then have an interview.”
9. The fourth ground is that given what is said at ground three there was no basis for the conclusion at paragraph 86 of the decision that in the Mormon church “baptism and confirmation could easily be obtained”
10. The fifth grounds is that Judge M Davies speculated at paragraph 86 of the decision about the appellant having been aware that conversion was a way to claim asylum from other Iranian asylum seekers and that it would be easy to do this by joining the Mormon church, and that Bishops Smith and former Bishop Knight had an “overriding desire” to increase the size of their church membership, and thus in turn responded to the appellant wanting to join their congregations without any consideration as to whether she was dissembling genuine interest.

11. The sixth ground is that Judge M Davies errs in law by failing to answer the two key questions which arise from the country guidance in R (on the application of SA (Iran)) v SSHD [2012] EWHC 2575 (Admin) and Dorodian (01/TH/01537: firstly whether the appellant was a regular church attender and secondly whether she would be at risk as a result of that fact.
12. In a Rule 24 response the respondent states, firstly, that there is no evidence of Judge Davies forejudging the merits of the appeal before him. That it was neutral to assert at paragraph 78 of the decision that as Iranians would be persecuted for conversion that it was a route which was open be subjected to abuse by asylum seekers.
13. It is argued in the Rule 24 response that the second ground did not indicate an error of law either as the principles of Devaseelan were properly adhered to: the appellant had been previously found to be an incredible witness who left Iran for economic betterment and this was the starting point for Judge Davies. It was open to him to find the appellant not to be credible given his findings about her evidence at paragraph 87 of the decision.
14. Thirdly it is argued in the Rule 24 response that the genuine nature of the conversion was a matter for the First-tier Tribunal and not just whether the appellant attends church, and there is therefore no error at paragraph 70 of the decision.
15. In a letter dated 29th March 2017 from Mr M Diwnycz, Senior Presenting Officer, he states from the records of the presenting officer before the First-tier Tribunal there is no evidence that that the First-tier presenting officer found anything “exceptional” in the way Immigration Judge Davies conducted the appeal, and that the presenting officers’ notes are not evidence of the behaviour complained of by the representatives.
16. However, before me Mr Tufan accepted that the First-tier Tribunal had erred materially in law in the ways argued for by the appellant with the exception of the contention of an appearance of bias. However, it became clear he did not have the additional witness statements and emails before him which the appellant had submitted in support of this contention from Bishop Smith, Ms S Hutton and the appellant’s GP letter.
17. I informed the parties that having read the papers on file and heard what Mr Tufan had to say I found the First-tier Tribunal to have erred materially in law, and that I would set aside the decision of Judge M Davies as a result. I set out my reasoning below. I drew both parties’ attention to the issue of the grant of refugee status to the appellant’s husband in Turkey and his evidence of Christian conversion, documents relating to which were to be found in the

appellant's and respondent's bundles that had been before the First-tier Tribunal, which I found to be material documents which would have to be considered on any remaking. It was agreed that the matter should remain in the Upper Tribunal for the remaking hearing, which was then adjourned due to lack of a Farsi interpreter and the absence of one key witness.

Conclusions - Error of Law

18. In Alubankudi (Appearance of bias) [2015] UKUT 542 at paragraphs 7 and 8 Presidential guidance on the requirements for a finding of an appearance of bias is set out as follows: "Further refinements of the fair hearing principle have resulted in the development of the concepts of apparent bias and actual bias. The latter equates with the prohibition identified immediately above. In contrast, apparent bias, where invoked, gives rise to a somewhat more sophisticated and subtle challenge. It entails the application of the following test:

"The question is whether the fair minded observer, having considered the facts, would conclude that there was a real possibility that the tribunal was bias."

See Porter v Magill [2001] UKHL 67, at [103].

In *Re Medicaments* [2001] 1 WLR 700, the Court of Appeal provided the following exposition of the task of the appellate, or review, court or tribunal:

"The Court must first ascertain all the circumstances which have a bearing on the suggestion that the Judge was bias. It must then ask whether those circumstances would lead a fair minded and informed observer to conclude that there was a real possibility that the Tribunal was bias. The material circumstances will include any explanation given by the Judge under review as to his knowledge or appreciation of those circumstances."

In *Lawal v Northern Spirit* [2003] UKHL 35, the House of Lords reiterated the importance of first identifying the circumstances which are said to give rise to apparent bias.

"8. The authorities place due emphasis on the requirement that the hypothetical reasonable observer is duly informed. This connotes that the observer is in possession of all material facts. See, for example, *Taylor v Lawrence* [2002] EWCA Civ 90, at [61] - [63]. Furthermore, the hypothetical fair minded observer is a person of balance and temperance, "neither complacent nor unduly sensitive or suspicious", per Lord Steyn in *Lawal* at [14]. Finally, it is appropriate to emphasise that the doctrine of apparent bias has its roots in a principle of some

longevity and indisputable pedigree, namely the requirement that justice not only be done but manifestly be seen to be done: see, for example, Davidson v Scottish Ministers [2004] UKHL 34.”

19. The Judge M Davies’ record of proceedings largely reflects what he sets out in his decision, and does not support what the appellant’s representative, Ms Nollet, says was said either in relation to the sweeping comments about Iranian asylum seekers; or the alleged allegation of bias by Ms Nollet and apology for that; or in relation to the evidence given by Bishop Smith about it being hard for the church to have safeguards for converts because of the level of commitment which is recorded at paragraph 49 of the decision. Judge M Davies has not provided any further comments. The presenting officer’s account is, I find, essentially neutral on the issue of what precisely happened as there is not a verbatim record of what happened available, although I acknowledge that there was also no record of anything untoward having taken place in that officer’s opinion.
20. In the circumstances, I must decide therefore whether overall, in all the circumstances of the case, a fair-minded observer would have concluded that in the hearing before Judge M Davies there was a real possibility of bias, or whether the decision errs in law in the other ways the appellant has argued.
21. In coming to my conclusion on the issue of apparent bias I take into account the statement of Bishop Smith who says that he was “appalled by the comments made by the Judge, they seemed very prejudicial towards both the appellant and Iranian people in general” and that of Ms Sharon Belinda Hutton, who also gave oral evidence at the hearing, and who says in an email to the appellant’s legal representative sent on the day of the hearing after it had been concluded, and thus prior to the promulgation of the decision, that she was concerned that the judge had made a comment that “Iranians use Christianity as a way of staying here”, and in her later statement commented that the judge was “dismissive and in a hurry to get finished” and also that she “felt that the scales of justice were not balanced and that the appellant’s fate had already been decided”. Both these witnesses were found to be sincere in their evidence by Judge M Davies. I find it is also relevant that the appellant’s GP has written to confirm that the appellant went to the GP in an upset state prior to the decision being promulgated, but after the hearing, on 5th October 2017, and said that she was having nightmares about her time in court and felt the judge had said she was “a liar like all people from Iran”.
22. Having considered all of this evidence including the transcript of Ms M Nollet, representative for the appellant, together with her

witness statement I conclude that a fair minded and informed observer would have concluded that there was a real possibility that Judge of the First-tier Tribunal M Davies was biased having witnessed the appellant's hearing before the First-tier Tribunal, and thus that there was a procedural error of law which means that this matter must be reheard de novo.

23. It is also the case that Judge M Davies has not been careful in his words with respect to the treatment, in accordance with Devaseelan, of the decision of the previous First-tier Tribunal decision of Judge Lever, in say that "the whole of the Appellant's testimony is predicated on the findings of Immigration Judge Lever" at paragraph 85 of the decision. There ought to have been a clear statement that the decision the appellant was not credible was the starting point but was it was possible that he could reach a different conclusion.
24. I find that Judge M Davies has also erred in law as he has not considered the evidence as set out in his own record of proceedings at paragraph 86 of his decision. Bishop Smith clearly did say that the appellant and her family had taken the relevant tests to be baptised in Bolton as a Mormon, and that it was not possible to be baptised without doing so because of the protocol, see page 6 of the Record of Proceedings at E. There is also no evidence on which Judge M Davies could have concluded that Bishop Smith wished to increase the size of his church membership as set out at paragraph 91 of the decision, or that conversion was easily obtained in the Mormon church as is said at paragraph 86 of the decision. It was also at the least extremely unwise of Judge M Davies to have implied that other asylum seekers may have encouraged or suggested to the appellant that conversion to Christianity might win her asylum as is done at paragraph 86 as again there is no evidence to support this proposition.
25. I find that it was correct to proceed on the basis that if the appellant was a genuine convert to the Mormon Christian church then she would be at risk of persecution on return to Iran as this is consistent with the country guidance provided in FS & Others (Iran Christian converts) [2004] UKIAT 303 upheld in SZ and JM (Christians, FS confirmed) [2008] UKAIT 82.
26. However, the First-tier Tribunal also erred in law for not considering a material matter, i.e., whether the appellant was at risk of serious harm on return to Iran as her husband is a refugee recognised in Turkey by UNHCR in September 2014, see documents at A 41 and A42 of the respondent's bundle. Although the basis of the grant is not stated there is also evidence at page A43 in the bundle that the appellant's husband had converted to Christianity in January 2014. This was evidence which clearly needed to be considered both in relation to the credibility of the appellant's claim for

refugee status in her own right as a Christian convert; and also as a separate issue of risk to her on return to Iran as the wife of a recognised refugee; and further in terms of family reunion rights she may have as a wife of a recognised refugee under the 1951 Convention.

27. Further it was an error of law not to have considered the highly material matter of the appellant's attendance at church as a factor in her favour when her credibility as a genuine Christian convert was being determined: the evidence before the First-tier Tribunal was that she has attended church regularly both Sunday meetings and Relief Society class since April 2012, a period of four and a half years at the date of decision, and that her adult sons have been ordained in to the priesthood since June 2013 and also attend with her. This evidence is not determinative of the issue but had to be considered given the honesty of the church witnesses who attested to this attendance was not challenged.

Decision:

28. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
29. I set aside the decision of the First-tier Tribunal in its entirety.
30. I adjourn the re-make of the appeal.

Directions:

1. The matter is to be relisted before me on 12th September 2017 with a time estimate of 3 hours.
2. A Farsi interpreter should be booked by the Tribunal Service.
3. Any new evidence to be relied upon by either party should be filed with the Tribunal and served on the other side 7 days prior to the hearing date, so by 5th September 2017.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant, or her husband who is a recognised refugee in Turkey or her adult children who are asylum seekers in the UK, from the contents of her protection claim.

Signed: Fiona Lindsley
Upper Tribunal Judge Lindsley

Date: 13th June 2017