



**Upper Tribunal
(Immigration and Asylum Chamber)**
PA/05948/2016

Appeal Number:

THE IMMIGRATION ACTS

Heard at Bradford
On 13th July 2017

**Decision &
Promulgated**
On 18th July 2017

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

[H K]
~~{ANONYMITY DIRECTION NOT MADE}~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Siddique,
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting
Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Manchester, promulgated on the 6th January 2017, to dismiss his appeal against the respondent's refusal of his Protection Claim.
2. The appellant's claim was that he had worked in a family-run bookshop in Kunduz, Afghanistan. One of the DVDs in stock was a film called 'Zindagi Hazrat Isha Masih', which was about the life of Jesus. The appellant had watched the video and felt

inspired by it. It did not however occur to him that others might view it as un-Islamic. This is because Jesus is a respected prophet in the Muslim tradition in his own right. The appellant therefore sold the video to his customers and thought nothing of it. However, he subsequently became aware of its potential to cause offence when the police came looking for him and his shop was burnt down by angry locals whilst he was away purchasing fresh stock in the neighbouring city of Por-e Khomri. He therefore fled to the UK, arriving on the 21st December 2015. He has since become a 'born-again Christian'.

3. The respondent accepted that the appellant is a citizen of Afghanistan but otherwise found his account lacking in credibility. Judge Manchester was similarly unimpressed by the appellant's account. Having considered the "cumulative effect of the inconsistencies" in that account, as well as the other issues of credibility that he identified, the judge concluded that "no credence" could be attached to either the appellant's account of events in Afghanistan or to the claimed sincerity of his conversion to Christianity [paragraph 60].
4. There are two grounds of appeal. The first complains that the judge adopted an unfair approach to the apparent inconsistency in appellant's account of the title of the DVD that led to his difficulties in Afghanistan. The second complains that the judge's findings concerning the chronology of the appellant's first attendance at church in the United Kingdom and refusal of his Protection Claim was contrary to the evidence. I shall consider them in turn.
5. On the face of it, the appellant had variously described the title of the video as "The Life of Prophet Jesus Christ", "The Life of Jesus Christ", and "The Life of the Prophet Isha". The judge considered that these differences were important because it was unlikely that a video including the words "Jesus Christ" within its title would be openly bought and sold in Afghanistan given the risk of it being viewed as heretical material by both the Afghan authorities and customers alike [paragraph 46]. Mr Siddique argued that the judge ought to have been astute to the possibility that these apparent discrepancies were the consequence of different translations of the same words, and that it was thus unfair not to have canvassed this possibility at the hearing. I reject that submission. It is apparent that the judge was fully aware of the possibility of variations in translation as is evidenced by his observation that (referring to the appellant's replies in his Asylum Interview) "this could simply have been a matter of translation" [paragraph 45]. The judge nevertheless discounted that possibility because it was not one that had been canvassed in a post-interview letter from the representatives to the Home Office that had otherwise set

out corrections and clarifications of the appellant's replies in that interview. This fact was sufficient in my view, to entitle the judge to assume that any apparent anomalies relating to the title of the video were due to inconsistencies in the appellant's description of it rather than to variations in its translation. There was thus no unfairness in the judge not canvassing the possibility of errors in translation given that the appellant's own representatives had not seen fit to do so at an earlier stage in the proceedings.

6. The second ground attacks the reasoning behind what the judge described as the "second limb" of the appellant's claim, namely, his conversion to Christianity following his arrival in the United Kingdom. The judge noted that the appellant had not attended church in the UK until roughly five months after his arrival and that his explanation for this was that he had had difficulty in finding one that included Farsi-speakers amongst its congregation. The judge attached little weight to that explanation given that the appellant had failed to detail his attempts to do so prior to being introduced by a flatmate to the church that he now attends.

7. The judge continued, at paragraph 55, as follows -

"In those circumstances, it is in my view right to exercise caution when considering the claim that his subsequent action in becoming a regular church attender and having been baptised was an organic development arising from the spark lit by his viewing the film in Afghanistan. Indeed, although he states that he attended the church for the first time on 8 May, this is not mentioned in the subsequent letter from his representatives and the date is not confirmed in the letter from David Lanstrom who only came to know him from July. In those circumstances, taking into account in any event that the Appellant's attendance at the church started on 3 July, it is difficult to avoid the distinct possibility that his attendance at the church may have been motivated more by the refusal of his protection claim than a genuine interest in Christianity."

8. The letter to which the judge referred is dated the 21st October 2016. It states that the appellant "first came to St Aidan's Church in May 2016" and "started to attend ... regularly on the 3rd of July". Thus, although the judge was correct in stating that the letter does not confirm "the date" of the appellant's first attendance at church, it clearly confirms that his attendance preceded the refusal of his Protection Claim, which was subsequently issued to him on the 31st May 2016. Moreover, whilst he recorded it at paragraph 31 of his decision, this aspect of the judge's reasoning makes no reference to David Lanstrom's oral testimony, which was to the effect that the church had made a contemporaneous written record of the appellant's attendance in May 2016. The clear implication of

this is that it would have been possible to verify the precise date in May when the appellant had first attended church.

9. It is right to say that at paragraphs 56, 57, and 58 of the decision, the judge explained at some length why he attached little weight to David Lanstrom's belief that the appellant was a genuine convert to Christianity before concluding that, whilst sincerely held, it may nevertheless, "have been over-influenced by his evangelical aims". There is however no suggestion that the judge found David Lanstrom to be anything other than a *truthful* witness. I am therefore satisfied that the reasoning at paragraph 55 of the decision was inconsistent with evidence that the judge found to be broadly credible. This was an error of law.
10. I have considered whether this error of law was material to the outcome of the appeal given the other sustainable reasons (including those based upon the inconsistencies relating to the title of the video) that the judge gave for finding that the credibility of the appellant was wanting. However, I have concluded that this aspect of his reasoning cannot be isolated from the remainder of the decision due to (i) the apparent emphasis that the judge attached to it in the final sentence of paragraph 55, and (ii) the cumulative basis upon which he stated that he had arrived at his conclusion [paragraph 66]. It is thus impossible to say whether or not the flawed reasoning at paragraph 55 tipped the balance against the appellant in the judge's overall assessment of his credibility. I have thus reluctantly come to the conclusion that the decision must be set aside and remade afresh in the First-tier Tribunal.

Notice of Decision

11. The appeal is allowed, the decision of the First-tier Tribunal is set aside, and the appeal is remitted to First-tier Tribunal to be remade by any judge save Judge Manchester.
12. Any further directions concerning the future conduct of this appeal are reserved to the Acting Resident Judge at Bradford.

No anonymity direction is made.

Judge Kelly

Date: 17th July 2017

Deputy Judge of the Upper Tribunal

