



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03583/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 26<sup>th</sup> January 2018

Decision & Reasons Promulgated  
On 28<sup>th</sup> February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR SH-S  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Bonavero, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran born on 21<sup>st</sup> March 1978. The Appellant's immigration history is extensive and is set out at paragraph 4 of the Notice of Refusal. The Appellant claimed asylum and his claim is based upon a fear that if returned to Iran he would face mistreatment due to his religion in that he had converted from Islam to Christianity. That application was refused by Notice of Refusal dated 27<sup>th</sup> March 2017. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Brewer at Taylor House on 15<sup>th</sup> September 2017. In a

decision and reasons promulgated on 9<sup>th</sup> October 2017 the Appellant's appeal was dismissed on all grounds.

2. On 23<sup>rd</sup> October 2017 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended:-
  - (i) that the First-tier Tribunal Judge had failed to correctly apply the decision of the Court of Appeal in *HJ (Iran) v the Secretary of State for the Home Department [2007] EWCA Civ 1024* in finding that the Appellant could return to Iran and practise his religion discreetly;
  - (ii) failed to properly take into account a psychological report on the Appellant when assessing the Appellant's evidence and credibility; and
  - (iii) the First-tier Tribunal Judge's overall assessment of credibility failed to apply the correct standard of proof and approach and is based on at least one material error of fact.
3. On 22<sup>nd</sup> November 2017 Judge of the First-tier Tribunal Brunnen granted permission to appeal. Judge Brunnen considered that the purported failure to apply the principles expounded in *HJ (Iran)* was arguable but is only material if the judge also fell into error in rejecting the Appellant's claimed conversion to Christianity. He further found that in making his findings as to the Appellant's credibility it was arguable that the judge had failed adequately to take into account the effect of his intellectual impairment. On those grounds therefore permission to appeal was granted. Judge Brunnen did not consider that the judge had failed to apply the correct standard of proof.
4. On 18<sup>th</sup> December 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Bonavero. The Respondent appears by her Home Office Presenting Officer, Mr Bramble.

### **Submission/Discussion**

6. Mr Bonavero starts by raising the preliminary point of a further Ground of Appeal lodged by the Appellant on 31<sup>st</sup> October 2017. That ground contended that the First-tier Tribunal Judge had materially erred in finding that the Appellant lacked knowledge of Christianity due to his inability to answer questions on "the Trinity". It is accepted by Mr Bramble that the administration fails to have addressed the putting of this further Ground of Appeal to the Secretary of State and further that it is made only seven days after the original grounds had been submitted. Mr Bonavero points out that at paragraph 51 of the judge's decision the judge has made adverse findings of credibility based on an apparent lack of knowledge of Christianity by the Appellant. The decision reads:-

"Contrary to the evidence of Reverend S, I found the Appellant's lack of knowledge about Christianity surprising given he is a recent convert.

Knowledge of the Bible may be justifiably limited, but to not understand the Trinity seems to me to be very surprising indeed.”.

7. Mr Bramble acknowledges that there is no evidence before the Tribunal as to what actually transpired in translation between the interpreter and the Appellant. However he does concede that at paragraph 259 of the Appellant’s Home Office interview the Appellant responded to the following:-

Question. Do you know what the three pillars of Christianity are?

Answer. Father, Son and Holy Ghost.

He consequently accepts that there is a contradiction between the finding of the judge and the evidence previously given to the Secretary of State by the Respondent.

8. Mr Bonavero points out that there was clear evidence that the Appellant suffered from severe cognitive difficulties and refers me to the report of Dr McN and the conclusion that the Appellant’s cognitive ability is within the lowest 0.1% of the population. He points out that the judge whilst accepting the report did not take any account of the evidence of Dr McN and the Appellant’s level of reasoning having been found by Dr McN to be that of a 7 to 8 year old and submits that this is a clear error of law.
9. As to the issue of the Appellant’s ability to return to Iran he submits this is only relevant if there is an error of law regarding the credibility of the Appellant’s claim and he submits that there is a lacuna to be found at paragraph 50 of the judge’s decision as to how the judge has come up with the finding that he doubted that the Appellant had attended a house church as he has suggested.
10. Further he takes me to paragraph 54 of the judge’s decision and the wording therein where the judge says “even if I accept the Appellant’s conversion in the UK”. He points out this is ambiguous and that he does not make a clear finding particularly as to what the Appellant would be expected to do on return. He submits that there are errors of omission and that the question can be asked as to whether the judge has properly applied the decision in *HJ* submitting that he has failed to make conclusions. In such circumstances he asks me to find that there are material errors of law, to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing.
11. In response Mr Bramble having accepted that the judge may have erred in his assessment of the Appellant’s understanding of the Trinity, that it then has to be looked at in the context of the expert report of the psychologist Dr McN. He acknowledges that the judge has failed to take into account the Appellant’s understanding of the Trinity but the question then arises as to the only issue being the Appellant’s purported conversion in the UK and whilst there is an error the question is whether or not it is material. He submits it is not and that it does not affect the whole determination. He submits that it comes back to the weight to be given to the consideration of Dr McN’s report and he refers me to paragraphs 9.1.4 and 9.1.5. He submits that this is relevant because at paragraph 50 the judge has addressed the Appellant’s evidence with regard to accurately recalling precise dates, times and sequence of events and that this is taken verbatim from paragraph 9.1.5 of

Dr McN's report. Mr Bramble submits that therefore the judge has taken into account the expert's evidence report and he is aware of the Appellant's problems. Consequently he does not consider that the judge has fallen into error regarding the Appellant's activities in Iran and that the points raised by the judge at paragraph 51 are well made. He considers the judge's findings are ones that he was entitled to make and that whilst accepting that the judge has failed to address the issue of the Appellant's conversion in the UK and that therefore this is an error he does not consider it overall infects the findings of the judge.

12. Mr Bonavero in response points out that the key point in this matter has actually been conceded by the Secretary of State and that this goes to the heart of the case and in such circumstances he submits it is hard to see how any findings can be preserved.

### **The Law**

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

15. There are concessions made by the Secretary of State in this matter that there are errors of law. The question is whether or not they are material. I find that they are. I turn to the findings on credibility. A proper approach to credibility would require an assessment of the evidence and of the general claim and in cases like this relevant factors would be the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. It is theoretically correct that a claimant need do no more than state his claim but that claim still needs to be examined for consistency and inherent plausibility. The judge has here materially erred. Bearing in mind Dr McN's report it is clear that the judge had to give considerable attention to the

evidence of the Appellant bearing in mind his psychological difficulties and the expert's conclusions. Merely paying lip service by reciting a paragraph of his decision is not sufficient. The judge needs to have made clear findings. The finding he made with regard to the Trinity is accepted as an error and it may well have tainted, when looked at in the round, the whole of the report despite the submissions made by Mr Bramble.

16. Further the basic principles as set out in *HJ (Iran)* still need to be applied and the question arises as to whether or not the judge has dealt with this sufficiently. When looked at in the round the judge has sidestepped the key issues in this matter by advocating that the Appellant could practise Christianity discreetly and has also failed to give proper and appropriate weight to documentary evidence in the report of Dr McN when assessing the credibility of a vulnerable adult and that when looked at together had the judge considered all the factors and made clear findings then he may have come to a different decision with regard to the credibility of the Appellant's testimony.
17. In such circumstances I find that there are material errors of law that taint the decision of the First-tier Tribunal Judge. The correct decision is to set aside the decision and to remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact to stand. That is not to say that on a rehearing of this matter it is not possible that the judge rehearing the matter will not come to exactly the same conclusion as that reached by the First-tier Tribunal Judge.

### **Decision and Directions**

The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. Directions for the rehearing of this matter are set out hereafter

1. On finding that the decision of the First-tier Tribunal Judge contains material errors of law the decision is set aside with none of the findings of fact to stand.
2. The appeal is remitted to the First-tier Tribunal sitting at Taylor House on the first available date 28 days hence with an ELH of three hours.
3. The remitted hearing is to be before any Judge of the First-tier Tribunal other than Immigration Judge Brewer.
4. That there be leave to either party to file and serve up-to-date objective and/or subjective evidence upon which they seek to rely at least seven days prior to the restored hearing date.
5. That a Farsi interpreter do attend the restored hearing.

Signed

Date 27 February 2018

Deputy Upper Tribunal Judge D N Harris

The First-tier Tribunal Judge granted the Appellant anonymity. No application is made to vary that order and none is made.

**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 him or any member of their 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.

Signed

Date 27 February 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 27 February 2018

Deputy Upper Tribunal Judge D N Harris