



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

Appeal Number: PA/11341/2017

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 30th November 2018**

**Decision & Reasons
Promulgated
On 21st December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**FZA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Gardner of Counsel instructed by Migrant Legal Project (Cardiff)

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Loughridge (the judge) of the First-tier Tribunal (the FtT) promulgated on 13th March 2018.

2. The Appellant is a male citizen of Iran born 5th May 1990. He arrived in the UK on 29th April 2015 and claimed asylum. His claim was based upon a fear of persecution on the basis of his religion, having converted from Islam to Christianity.
3. The Respondent refused the claim on 20th October 2017 and the appeal was heard by the FtT on 27th February 2018.
4. The judge heard evidence from the Appellant and Pastor Rees. The judge concluded that the Appellant's account of events in Iran was untrue and did not accept that his activities in the UK reflected a genuine conversion to the Christian faith. The judge found at paragraph 42 that the Appellant had carried out activities in the UK in "a deliberate and deceitful attempt to obtain asylum status in this country". The judge did not regard the evidence of Pastor Rees as particularly weighty, finding that his belief that the Appellant is a genuine convert to Christianity was wrong.
5. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by Judge Cruthers of the FtT. The application was thereafter renewed, the grounds having been settled by Counsel who represented the Appellant before the FtT.
6. In brief summary it was contended that the judge had materially erred in law by making perverse or irrational findings at paragraphs 40-42 of his decision.
7. It was accepted that the judge had at paragraph 29 correctly identified the issue in the appeal, by stating that;

"The appeal will therefore stand or fall on the basis of the credibility of the Appellant's account and my assessment of whether he has genuinely converted to Christianity".
8. In summary, it was submitted that the judge had made findings at paragraph 30 of his decision accepting that the Appellant had genuinely converted from Islam to Christianity. The judge had then made findings at paragraph 42 which were irrational and/or perverse and not open to him to make. Those findings were that the Appellant's account of events in Iran was not true, there were material inconsistencies in his account identified at paragraphs 36-38 of the judge's decision, and that the Appellant had undertaken activities in the UK in a deceitful attempt to obtain asylum status.
9. It was further submitted that the judge had erred by finding three material inconsistencies in the Appellant's account at paragraphs 36-38 of his decision, in that it was submitted primarily that there were no inconsistencies, but if there were, they were not material and did not affect the core of the Appellant's account.
10. Permission to appeal was given by Upper Tribunal Judge Storey in the following terms;

“It is arguable that the judge’s positive findings (especially that at para 30) are not compatible with his eventual negative findings (especially the penultimate sentence of para 42).

The grounds disclose an arguable error of law”.

11. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 submitting that the judge had not materially erred in law. It was contended that the judge had reached conclusions which were open to him to make on the entirety of the evidence, had not made any findings which were perverse, and did not err in finding that the pastor was sincere in his evidence, but had been deceived by the Appellant.
12. Directions were subsequently issued directing that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Upper Tribunal Hearing

13. At some point after the application for permission to appeal was submitted, and before the Upper Tribunal hearing, the Appellant changed legal representation. On 29th November 2018 Miss Gardner, who had not appeared before the FtT, lodged an application to amend the Grounds of Appeal which had been considered by Judge Storey.
14. In summary, the application was to amend the grounds to include the following additional grounds which had not featured in the previous applications for permission to appeal.
15. The first additional ground was that the judge erred by failing to take into account material evidence. The Appellant had provided to the FtT documentary evidence concerning his Christian activities in the UK, including his baptism certificate and letters of support from the various churches he attended.
16. Further, he had submitted evidence of his public posts on Facebook which showed that he had been posting material publicly online for a considerable period of time, the earliest post recorded was on 12th March 2015. These posts were public and it was submitted made clear the Appellant’s Christian faith.
17. Secondly, it was submitted that the judge had erred by failing to carry out a global credibility assessment by giving no weight to the clinical diagnosis of PTSD which was contained within a psychiatric report which was before the FtT. At paragraph 15 of that report it was stated that the Appellant suffered from avoidance, inability to recall, and difficulty in concentrating. The judge had erred by not taking this diagnosis into account when considering credibility. At the commencement of the hearing Mr Howells confirmed that he had been served with the application to amend the

grounds and had no objection to the grounds being amended as requested on behalf of the Appellant.

18. In the circumstances, I took into account that the issues raised in the new grounds had not been raised in the two previous applications for permission to appeal, so it was not the case that issues raised in the grounds had been refused permission to appeal. Rather, it was the case that previous Counsel had not raised these grounds. In my view it was appropriate to grant the application to amend the grounds. I then heard submissions from Miss Gardner. She relied upon the new grounds. I was asked to note the absence of any reference to the Appellant's Facebook posts in the decision of the FtT. I was asked to note that the dates on some of the posts pre-dated the Appellant's asylum interview, and expressed his Christian faith and this evidence had not been considered by the judge.
19. With reference to the psychiatric report, it was submitted that the judge had erred by not considering the diagnosis of PTSD when considering credibility.
20. Reliance was also placed upon the original grounds upon which permission to appeal was granted by Judge Storey, on the basis that there was an inconsistency in the findings made by the judge at paragraphs 30 and 42.
21. Mr Howells submitted that there was no material error of law. It was contended that the judge had considered all evidence before him. It was accepted that there was no reference to the Facebook posts, but Mr Howells pointed out, and he had represented the Respondent before the FtT, that there was no reference to the Facebook posts either in the Appellant's witness statement before the FtT, or in the skeleton argument relied upon by the Appellant before the FtT.
22. I was asked to find that the judge had considered the psychiatric report and made reference to it at paragraph 39 of his decision. He had attached some weight to the report.
23. Mr Howells submitted that there was no inconsistency when paragraphs 30 and 42 were compared.
24. With reference to the inconsistencies in the Appellant's account referred to by the judge at paragraphs 36-38, Mr Howells submitted that the judge was entitled to find inconsistencies in the account, and the grounds relied upon by the Appellant before the Upper Tribunal amounted to a disagreement with findings properly made by the judge.
25. In response, Miss Gardner submitted that the Facebook posts were contained in a supplementary bundle relied upon by the Appellant before the FtT and should have been considered. It was submitted that the reference by the judge to the psychiatric report at paragraph 39 was brief, and did not adequately consider the diagnosis of PTSD.

My Conclusions and Reasons

26. I deal firstly with the ground upon which permission to appeal was initially granted, that being the alleged inconsistency between paragraphs 30 and 42 of the FtT decision.

27. I find no material error of law on this issue. I reject the submission made in the original grounds at 1(iii) that the judge at paragraph 30 accepted that the Appellant had genuinely converted from Islam to Christianity. My view is that the judge did not accept that. At paragraph 30 the judge explained that in his view the Appellant's knowledge of the Christian faith was not a particularly weighty issue. He found that the Appellant had demonstrated a reasonable level of knowledge such that a genuine conversion is a possibility. However, the judge specifically stated that he did

“not accept that a reasonable level of knowledge of the Christian faith is a particularly strong indicator of a genuine conversion because that is also consistent with an individual who is seeking to obtain asylum status in this country by way of deceit/dishonesty, and who has put in a lot of effort to learn the basic principles of Christianity in order to present a credible claim”.

The judge went on to state that the issue of knowledge is of most significance in cases where there is only limited knowledge of Christianity, which points towards a fraudulent claim, and found that the Appellant's knowledge was sufficient to avoid that inference.

28. In my view the grounds seeking permission to appeal misinterpret paragraph 30 and as the judge is not accepting in that paragraph that there is a genuine conversion, I find there is no contradiction with paragraph 42, and the findings in paragraph 42 are not irrational or perverse.

29. I find that the inconsistencies referred to at paragraphs 36–38 of the judge's decision were open to the judge to make. On this issue, the grounds amount to a disagreement rather than display an error of law. There is a challenge to a finding made by the judge at paragraph 40, in that it is contended that the judge erred in concluding that the Appellant gave the impression in answering questions 109–111 of the asylum interview, that he took the initiative in raising the issue of Christianity with an individual, which is somewhat different to what he said in oral evidence. I find that this finding was open to the judge to make. In answer to question 110 in which the Appellant was asked why he started discussing Christianity, he replied, in summary, that he knew the individual was a Christian, and he wanted to find out more about Christianity. I find no error of law here.

30. Turning to the issues raised in the amended Grounds of Appeal, I do not find that the judge disregarded the fact that the Appellant had submitted a baptism certificate and letters of support. Baptism was referred to in the

evidence of Pastor Rees which was considered by the judge and the judge took into account the pastor's evidence as confirmed at paragraph 31, which included the Appellant's regular attendance at church and various other activities such as Bible Study classes.

31. I do however find that the judge erred in law in failing to consider the public Facebook posts. There is no reference to the Facebook posts in the decision of the FtT. It is clear that Facebook posts were included in the Appellant's supplementary bundle, which was before the FtT, under the heading "Other Evidence" at pages 56-97 of the supplementary bundle. Not all of those pages relate to Facebook posts, as some are photographs of the Appellant in church or outside a church. The post referred to in oral submissions is at page 60 of the bundle and I accept that this was made on 12th March 2015. It is not translated so no weight can be attached to that aspect of the post, although it does contain the emblem of a Christian cross.
32. I accept that the Facebook posts were not specifically mentioned in the skeleton argument dated 13th February 2018 prepared by previous Counsel, and which was before the FtT. There is however reference in paragraph 2 of that skeleton argument to the basis of the Appellant's case being set out in his bundle of documents, his witness statement and supplementary bundle, and the Respondent's bundle. Therefore reliance was placed upon the supplementary bundle.
33. The posts are public, and do indicate the Appellant's support for the Christian faith. In my view it is a material legal error not to give any consideration to the possible effect of these posts. If no weight was to be given to that evidence, reasons should have been given explaining why not. If the judge found that evidence to be completely irrelevant, reasons should have been given to explain that. It is possible that those posts could put the Appellant at risk from the Iranian authorities if returned, and if the judge believed that there would be no risk, again reasons should have been given. There is no finding by the judge as to whether the posts have been taken into account when considering whether the Appellant's conversion to Christianity is genuine.
34. In addition, in my view the judge erred in not attaching any weight to the clinical diagnosis of PTSD when considering credibility. I accept that the symptoms of PTSD are explained in paragraph 15 of the report as remembering, avoidance, inability to recall, either partially or completely, and concentration, amongst other symptoms. I also accept that there is no reference to the psychiatric report in the Appellant's skeleton argument. It is however clear that reliance was placed upon the psychiatric report as the judge does make reference to it at paragraph 39. The judge does not however make any reference to considering whether the diagnosis of PTSD would have any material effect upon the Appellant's recollection of events in Iran, in which the judge found inconsistencies. The judge's finding at paragraph 39 was that the diagnosis was based upon the Appellant's account of events in Iran, and therefore this does not

indicate that those events necessarily took place. The correct approach would have been to consider whether it was accepted that the Appellant had PTSD. If it was not, reasons would need to be given for rejecting the expert's report. If it was, then the effect of that diagnosis upon the Appellant's account would need to be considered. That is not to say the psychiatric report is conclusive, but for the reasons given above, I find the judge's approach to consideration of that report displays an error of law.

35. I therefore conclude that the decision of the FtT, although prepared with care, contains material errors of law as described above, and is unsafe and must be set aside. No findings are preserved.
36. Both representatives agreed that if there was an error of law as contended by the Appellant, it would be appropriate to remit the appeal back to the FtT to be heard again.
37. I have considered paragraph 7 of the Senior President's Practice Statements, and find that it is appropriate to remit the appeal back to the FtT because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be re-made.
38. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Loughridge.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

An anonymity direction 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 his 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
2018

Date 5th December

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

The Upper Tribunal makes no fee award. The issue of any fee award will need to be considered by the FtT.

Signed
2018

Date

5th

December

Deputy Upper Tribunal Judge M A Hall