



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/11984/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Glasgow

Decision and Reasons

Promulgated

On 18 December 2017

On 03 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**MOHAMMAD JAVAD BAGHERI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: G P McGowan, of Quinn Martin & Langan, solicitors
For the Respondent: Ms M O'Brien, Senior Home Office Presenting
Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Bradshaw promulgated on 18 July 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 17 October 1986. He is a national of Iran.
4. The appellant arrived in the UK on 10 November 2014. He claimed asylum that day. On 8 May 2015 the Secretary of State refused the Appellant's protection claim. The appellant appealed against that decision. His appeal was refused in a decision promulgated on 14 September 2015. He was refused permission to appeal to the Upper Tribunal, and his appeal rights were exhausted on 12 November 2015. On 25 April 2016 further submissions were lodged on the appellant's behalf. The respondent considered those further submissions and refused the appellant's claim on 18 October 2016.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Bradshaw ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 9 October 2017 Judge Maller gave permission to appeal stating

2. The Judge referred to a note from the appellant agents, who had also represented the appellant at his earlier appeal. The note "specified" that it was only at the end of summer that the appellant wanted to become a Christian [71]. The Judge thus found that his failure to raise the issue of wanting to become a Christian at his hearing on 3 September 2015 affected his credibility [78].

3. It is submitted in the grounds that when the appellant referred to the end of summer he was referring to the end of the sixth month in the Iranian solar calendar which ends on 22 September. His witness statement before the Judge at the 2015 hearing was signed a month before the end of his summer. A copy file noted that the appellant first raised the issue on 13 October 2015.

4. It is arguable as asserted in the grounds that the Judge might have incorrectly made an adverse credibility finding on an incorrect basis.

5. All grounds are arguable.

The Hearing

6. (a) For the appellant, Mr McGowan moved the grounds of appeal. He told me that to a large extent this appeal revolves around the meaning of the phrase "*the end of summer*". He told me that the summer ends at the autumnal equinox, which falls on 23 September. The appellant's first claim for asylum was determined at a hearing of the First-tier Tribunal on 3 September 2015. The appellant's claim then was to fear persecution because of his political opinion. At the hearing on 3 September 2015 the

appellant said nothing about an interest in Christianity. He told me that the Judge's finding at [68] of the decision now under appeal is unsafe. He told me that the Judge's credibility findings have their basis in the belief that the appellant delayed in making his claim. He told me that the Judge's reasoning is flawed because the appellant's decision to convert to Christianity did not take place until the end of September, weeks after his hearing before the First-tier Tribunal in 2015.

(b) Mr McGowan drew a distinction between enquiry into a separate faith and converting to that faith. He told me that the Judge's findings between [74] and [78] of the decision are based on an error of fact. He told me that if the Judge had understood that the appellant's religious awakening post-dated the hearing before the First-tier in 2015, the Judge would have reached different conclusions.

(c) Mr McGowan told me that four witnesses gave evidence for the appellant. Their evidence is summarised between [28] and [48] of the decision. He told me that the Judge ignored their evidence. He argued that there is no meaningful analysis of the evidence of the four witnesses, and that the Judge did not properly balance all of the evidence placed before him. He told me that the decision is tainted by material errors of law and urged me to set the decision aside.

7. For the respondent Mr O'Brien told me that the decision does not contain errors, material or otherwise. She adopted the terms of the rule 24 notice and told me that the Judge cannot be criticised for applying an ordinary meaning to the words employed by the appellant. She urged me to look at the matters which were competently before the Judge and to consider whether it is likely that there would be an increase in religious fervour in the few weeks that passed between 30 September and 13 October 2015 (when the appellant told his solicitor about his interest in Christianity). She told me that the solicitors file note which is relied on supports the Judge. She told me that the Judge was perfectly entitled to grapple with the appellant's previous dishonesty as part of an overall assessment of the appellant's claim. Ms O'Brien told me that the absence of consideration of evidence from witnesses is academic because the Judge clearly finds that the appellant is neither a credible nor a reliable witness. She urged me to dismiss the appeal and allow the decision to stand.

Analysis

8. At [62] the Judge correctly records that the decision promulgated on 14 September 2015 is only a starting point in terms of Devaseelan. At [65] the Judge records the appellant's position is that when his earlier application (on entirely separate grounds) was considered, he had started to go to a Christian church but did not yet consider himself a Christian. At [71] the Judge focuses on what was meant by becoming a Christian "*at the end of summer 2015*". Between [73] and [75] the Judge records the appellant's evidence - that by at least June 2015 he had an interest in Christianity.

9. In his witness statement dated 17 May 2017 the appellant says that at the time of his appeal hearing in September 2015 he had only been going to the Tron Church for a few months. Despite that evidence, it was open to the Judge to find that the appellant had no involvement with Christianity in the months prior to his hearing in September 2015.

10. The appellant seeks to draw a distinction between going to a Christian church and working towards baptism. At [79] of the decision the Judge accepts that the appellant has been baptised in the Tron Church

11. Between [81] & [85] the Judge finds that the appellant lied in his first claim for asylum, and that the appellant refuses to acknowledge that he fabricated that claim and so is persisting in a lie. At [85] the Judge finds that the appellant's refusal to accept the First-tier's decision in September 2015 mitigates against his claim to have converted to Christianity.

12. What the Judge does not do is reconcile his findings between [81] and [85] with the evidence of the appellant's four witnesses. It is clear from the decision that the Judge accepts that the appellant has been baptised and accepts that four members of his congregation of faith spoke in support of the appellant. The Judge finds a perceived delay in making a claim, and a refusal to accept a decision from the tribunal in an entirely separate claim to be the two factors which are determinative of this appeal.

13. The approach taken by the Judge is not safe. Despite what is said at [88] of the decision that is no meaningful analysis of the evidence of the four witnesses for the appellant. It is not clear why the Judge rejects their evidence. It is not clear why the Judge places no weight on the accepted fact that the appellant has been baptised a Christian. The result is that there is an inadequacy of fact-finding and an inadequacy in the reasoning in the decision.

14. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

15. As the decision is tainted by material error of law I must set it aside. I consider whether or not I can substitute my own decision, but find that I cannot do so because of the extent of the further fact finding necessary.

Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

18. I remit this case to the First-tier Tribunal sitting at Glasgow to be heard before any First-tier Judge other than Judge Bradshaw.

Decision

19. The decision of the First-tier Tribunal is tainted by material errors of law.

20. I set aside the Judge's decision promulgated on 18 July 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed Paul Doyle
December 2017

Date 28

Deputy Upper Tribunal Judge Doyle