



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

Appeal Number: PA/12288/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 January 2018**

**Decision & Reasons  
Promulgated**

**On 22 January 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**S J-K**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr. P. Duffy, Home Office Presenting Officer

For the Respondent: Ms A. Patyna, Counsel, instructed by Montague Solicitors LLP

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Wright, promulgated on 8 May 2017, in which she allowed the Appellant's appeal against the Secretary of State's decision to refuse a grant of asylum.
2. For the purposes of this decision I refer to the Secretary of State as the Respondent and to Mr. J-K as the Appellant, reflecting their positions as they were before the First-tier Tribunal.

3. Permission to appeal was granted as follows:

“The conclusions reached by the Judge are inadequately reasoned as is his conclusion that the “Dorodian” witnesses evidence was such that he was satisfied the Appellant was a genuine convert.

In relation to the “Dorodian” witness the Judge seems to have ignored evidence that the Appellant and his witness would have difficulty communicating.

The grounds and the decision do disclose an arguable error of law.”

4. I heard submissions from both representatives following which I reserved my decision.

**Submissions**

5. Mr. Duffy submitted that there were two grounds of appeal identified but that they spoke to the same point. The Judge had set out in evidence that there were some problems with the Appellant’s claim and had failed to give adequate reasons for her findings regarding these problems. It was only in paragraph [30] that any reasons were given. Essentially she had found that, as she could not tell whether or not the Appellant was a Christian, she accepted that he was. This was inadequate. There were various problems with the Appellant’s evidence which had not been factored in to her assessment. The outcome was not “impermissible” but it was inadequately reasoned. The decision should be set aside and remitted to the First-tier Tribunal.
6. In response, Ms Patyna relied on her skeleton argument. She submitted that there was no conflict. She referred to paragraphs [3] onwards of the decision. Paragraph [13] was the material paragraph in relation to the Dorodian witness. The evidence spoke to the ways in which the witness had communicated with the Appellant. They had overcome language difficulties. The witness’s view was that the Appellant was a genuine convert. He did not have to be 100% persuaded. The crucial Dorodian evidence was from a representative of the church who could confirm the Appellant’s ongoing commitment to the church. Paragraph [30] addressed the issue.
7. Ground 2 had no merit. The Judge only needed to find that the Appellant was a Christian. The Judge took account of Mr. E’s evidence. There was a letter and written evidence before the Judge. The witness believed that the Appellant was a practising Christian. The grounds sought to reargue a point regarding language. The submissions as set out at [14] to [22] did not indicate that the credibility of Mr. E had been questioned during the hearing. Neither had his ability to act as a Dorodian witness.

8. The assessment at [30] was an assessment in the round. The Judge referred to the evidence of the Appellant's commitment and the evidence of the witness. Paragraph [30] was brief but complied with the guidance for such cases. It was not material if there had been no assessment of the Appellant's credibility. He was now a committed Christian convert.
9. The Judge had confused matters by raising the case of YB. This was a sur place Christianity claim. The Appellant's previous conduct did not matter. The Judge had not ignored the evidence of the Appellant's activities prior to coming to the United Kingdom. She had noted it. Paragraph [30] was an assessment of credibility. Enough had been presented in evidence for the Appellant to discharge the burden of proof. The Judge had given adequate reasons. There was no error of law.

### **Error of law**

10. The Judge's findings are set out at paragraph [30]. This states:

"Applying these principles to this appellant, the Tribunal found that although his activities regarding which it heard evidence prior to arriving in the UK may not be convincing, he has, since he arrived in the UK demonstrated his commitment to his conversion to Christianity. It is not accepted that he has acted in bad faith. The Tribunal takes account of his baptism, his attendance at church, the support offered by his church, Mr E's evidence and his conviction of the claimant's faith. There is no "test" by which he can demonstrate his faith. The evidence which the appellant did produce in respect of his Christian faith was accepted and therefore the Tribunal finds the appellant is a convert and that his evidence in respect of that was credible."

11. This is the full extent of the Judge's findings. Her assessment of the evidence and her findings in relation to all the evidence before her is summed up in just one paragraph.
12. The Judge finds that the Appellant's evidence of events before he came to the United Kingdom "may not be convincing". She has not given any more detailed reasons as to what she means by this, or set out any reasons for why it is not convincing, but this finding indicates that she has concerns about the credibility of the Appellant's evidence. However, this is as far as she takes it. She does not factor this adverse finding into her assessment of the evidence as a whole.
13. Instead she turns to focus on the evidence of the Appellant's current commitment to Christianity. She states that it is not accepted that he acted in bad faith, but gives no reasons for this finding. Especially given that this statement follows on immediately after her finding that some of his evidence has not been credible, reasons need to be given for the finding that the Appellant has not acted in bad faith.

14. The Judge then states that the Tribunal has taken into account his baptism. No further details are given at [30]. However, when the Judge set out the evidence, she recorded that the Appellant “said that he did not know in advance he was going to be baptised. He met his friend, went to church and then he was baptised” [12]. Given this evidence, which does not indicate any active participation of the Appellant in his baptism, it is not enough for the Judge to say that she has taken into account his baptism without giving reasons as to why this baptism, given the circumstances, adds to the credibility of his account of being a committed Christian.
15. The Judge then states that she has taken into account his attendance at church and the support offered him by the church, “Mr. E’s evidence and his conviction of the claimant’s faith”. It was submitted by Ms Patyna that essentially this was enough. Mr. E was a Dorodian witness and his evidence could be relied on to find that the Appellant was a genuine Christian convert.
16. The Judge has set out the evidence of Mr. E at [13]. She states:

“Mr E gave evidence that the appellant was a regular worshipper at his church, having started attending just over a year ago. They communicate as best they can and use technology to translate for the appellant. Mr E was absolutely convinced that the appellant was a genuine convert and his faith was authentic. He said that he had contacted the church of the appellant’s baptism as it was important to establish there had been a Farsi translator present who could ensure the appellant’s understanding. Mr E had no concerns that had the appellant not been baptised; he would be baptised at his church.”
17. This evidence has not been expressly referred to at [30]. I find that there are some questions raised by the record of this evidence, especially in relation to the issue of baptism. The Judge has recorded that the witness had “no concerns that had the Appellant had not been baptised” and that “he would be baptised at his church”. It is not clear whether the witness has concerns about the baptism that the Appellant underwent previously. If he does not, it is difficult to see why the witness would need to baptise the Appellant again. It is not clear from this whether the answer to the witness’ question was that there had been a Farsi interpreter present when the Appellant had been baptised.
18. In relation to the issue of language. At [21] it states:

“It was the appellant’s case Mr E was a credible and honest witness, who does not claim to fully understand the appellant due to the linguistic difficulties. He is however assured of the appellant’s commitment and supports his case.”
19. This follows the record of evidence at [13] that they communicate “as best they can”. Even if the Respondent had not expressly raised the issue of communication between the Appellant and the witness in the First-tier

Tribunal, if the Judge is going to place as much reliance as she does on Mr. E's evidence, there needs to be no doubt as to the ability of Mr. E and the Appellant to communicate.

20. Paragraph [21] indicates that it was accepted that the Appellant and Mr. E did not fully understand each other. Further, there are no details given of the kind of conversations that they had, and the nature of any discussions. There is insufficient reasoning given as to why, in these circumstances, the Judge was prepared to accept the evidence of Mr. E and attribute it so much weight, outweighing the adverse credibility finding made in relation to the Appellant's account of events in Iran prior to coming to the United Kingdom.
21. The Judge states that the evidence of the Appellant's faith was "accepted" yet the evidence of the Appellant's conversion to Christianity as set out by the Judge is not without its problems, especially in relation to his baptism. The evidence of Mr. E appears to suggest that the Appellant may be baptised again, which puts into doubt the Appellant's baptism on which the Judge relies.
22. I find that the Judge's reasoning is inadequate. She has failed to consider the evidence in the round. She has given no explanation for her finding that the Appellant has not acted in bad faith, given her adverse credibility finding relating to his evidence. She has given inadequate reasons for her reliance on the evidence of Mr. E, given the evidence as set out in the decision of the difficulties in communication. She has given inadequate reasons for accepting the evidence provided.
23. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

## **Decision**

24. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
25. The appeal is remitted to the First-tier Tribunal to be re-heard.
26. The appeal is not to be heard by Judge Wright.

**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

Date 19 January 2018

Deputy Upper Tribunal Judge Chamberlain