



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13818/2016

THE IMMIGRATION ACTS

Heard at Piccadilly Exchange, Manchester
On 11th January 2018

Decision & Reasons Promulgated
On 17th January 2018

Before

UPPER TRIBUNAL JUDGE COKER

Between

MS
(Anonymity Order made)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, Broudie Jackson & Canter

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

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant/parties in this determination identified as MS. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. MS is an asylum seeker from Iran. He claims to have converted to Christianity. His claim was refused by the respondent for reasons set out in a letter dated 29th November 2016. His appeal against the refusal of his protection and human rights claim was dismissed by First-tier Tribunal Judge Moore for reasons set out in a decision promulgated on 7th February 2017.
2. MS applied for, and was granted, permission to appeal on the grounds
 - (i) It was arguable the First-tier Tribunal judge had made perverse/irrational findings that the appellant had not attended an underground church in Iran; and
 - (ii) It was arguable the First-tier Tribunal judge had sought corroborative evidence to support the contention that there was an arrest warrant issued against the appellant; and
 - (iii) It was arguable the rejection of Pastor Hemus' evidence and treating that evidence as incredulous was not supported by adequate reasoning and contrary to established principles namely *R (on the application of SA) Iran* [2012] EWHC 2575 (Admin).
3. Although expressed as separate grounds, the material upon which they are pleaded is common to each, and at its core, is reliant upon the treatment of the evidence of Pastor Hemus. There are contradictions and inconsistencies recorded in the appellant's evidence as set out in the decision around the number of times the appellant attended the underground churches in Iran and his seeming lack of understanding of the two baptisms he underwent in the UK. Nevertheless it is perverse to conclude from that evidence that the appellant would not
 - "have attended the house church in Shiraz when he was clearly aware of the dangers of doing so, particularly bearing in mind that according to the appellant, having spoken to Eman about attendance, he told his friend that he needed "to think about it"."

Such a conclusion belies the existence of the underground churches in Iran and fails to consider the nature of belief developed in a country where religious belief contrary to mainstream belief may have adverse consequences.

4. The judge expressed incredulity at Pastor Hemus' evidence. Although Mr Bates submitted that although the language used by the Judge was perhaps not called for, and that the judge was expressing his view that the Pastor was perhaps gullible and/or naïve, that is not how the judge expressed himself. The Pastor was firm in his evidence of the appellant's conversion and provided an explanation why the appellant may not have understood whether or not he had been baptised – a matter considered in *Dorodian/SA*. The judge failed to address the evidence in that context. Dismissal of the Pastor's evidence based on incredulity without any apparent examination of how or to what extent the Pastor has been naïve and /or gullible is a material error of law. The Pastor was not, from the record as it appears in the decision, questioned about, for example, his experience of converts, how he reached his conclusion that the appellant was genuine and whether he had given evidence in such cases before. In the absence of a reasoned basis for questioning the reliability of the Pastor's conclusions, it is perverse for the judge to conclude that his evidence carried little weight.

5. The issue of the arrest warrant was not canvassed before me and seems to be of little impact. The material errors of law are such that this decision has to be set aside to be remade.
6. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The nature and extent of fact finding required in this appeal is such that it should be remitted to the First-tier Tribunal for rehearing, no findings of fact preserved.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I set aside the decision and remit it to the First-tier Tribunal to be remade, no findings of fact preserved.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).



Date 15th January 2018

Upper Tribunal Judge Coker