



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

Appeal Number: PA/05658/2018

THE IMMIGRATION ACTS

Heard at Field House

On 16 January 2019

**Decision &
Promulgated
On 14 March 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**MEHDI [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett of Counsel instructed by JD Spicer Zeb

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The decision of First-tier Tribunal Judge Cary promulgated on 8 August 2018 is set aside for material error of law. The decision in the appeal is to be remade before the First-tier Tribunal with all issues at large by any First-tier Tribunal Judge other than Judge Cary.
2. Given the basis of my conclusion in these proceedings today I do not propose to rehearse in any detail the background circumstances of the Appellant and his asylum claim. Suffice to say for present purposes that he is a national of Iran who has claimed asylum in the United Kingdom on the basis of his conversion from Islam to Christianity. As an aspect of his narrative account he referred to having written and recited poems whilst in Iran.

3. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge McWilliam on 3 December 2018. The grant of permission sets out the narrow basis for that grant in the following terms:

“The grounds assert that the appellant recited a poem in evidence before the judge. It is arguable that the judge erred in saying that the appellant had not been able to recite poems in evidence (see [42]). He arguably attached weight to this.”

4. In context I note that paragraph 42 of the decision of the First-tier Tribunal states in part:

“If the Appellant wrote them and recited them as regularly as claimed, I do not understand why he was not able to recite the poems in evidence or at least given me significantly more information about their content.”

5. Mr Tufan on behalf of the Secretary of State has very fairly and properly produced a copy of an attendance note prepared by Counsel who appeared on behalf of the Respondent before the First-tier Tribunal. In material part the note includes the following:

“This was demonstrated by long and confusing evidence given about the poems which ended up with the poems being recited and placed before the court in writing ...”

6. In the circumstances Mr Tufan does not dispute that the Appellant did indeed recite one or more of his poems before the First-tier Tribunal. As such it is acknowledged that there is a fundamental misconception of fact apparent at paragraph 42.

7. It is also plainly the case that the Judge speaks critically of the Appellant’s evidence in this context such that the misconception of fact appears material to the ‘in the round’ evaluation of his evidence.

8. In this latter context I note that the First-tier Tribunal Judge expressed difficulties in accepting and/or understanding many other aspects of the Appellant’s evidence – it was not the single point in respect of which the Respondent now acknowledges error that informed the Judge’s overall adverse assessment of the Appellant’s credibility. However, as Mr Tufan again very fairly and properly acknowledges, it is difficult to separate out the individual strands of the overall assessment, or otherwise to conclude

that the Judge's overall assessment has not been coloured at least in some material respect by his error.

9. On this basis the Secretary of State does not seek to resist the challenge to the decision of the First-tier Tribunal Judge.
10. In all the circumstances I accept the common position of the parties that there was a material error of law. It is also common ground, and I accept, that in such circumstances the decision in the appeal requires to be remade with a fresh hearing before the First-tier Tribunal.

Notice of Decision

11. The decision of the First-tier Tribunal is set aside for material error of law.
12. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Cary, with all issues at large.
13. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: 11 March 2019

Deputy Upper Tribunal Judge I A Lewis