



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

Appeal Number: PA/05203/2019

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 13 January 2020

On 16 January 2020

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

**A V
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. 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.

Representation:

For the appellant:

Mr A. Chakmakjian, instructed by Leonard Cannings LLP

For the respondent:
Officer

Mr D. Clarke, Senior Home Office Presenting

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 26 April 2019 to refuse a fresh protection and human rights claim.
2. First-tier Tribunal Judge Zahed ("the judge") dismissed the appeal in a decision promulgated on 21 October 2019. The judge considered the findings made in an earlier appeal in 2008 [16-21]. He went on to identify a number of inconsistencies in the appellant's previous account and in the evidence given in relation to this application [22-33]. At [34] the judge came to the following conclusion:

"34. I find that the appellant attended a church in 2008 in order to bolster his claim for his pending asylum claim and subsequent appeal hearing in 2008. I find that the appellant started attending church again in 2015 in order to obtain evidence for his further submissions application in 2017. I find that the appellant's attendance at the church for a short period in 2012 and subsequently from 2015 is not as a genuine converted Christian but in order to be able to produce evidence to the respondent and for his asylum appeal. I find in line with the evidence before the previous IJ and applying the case of **Devaseelan** that the appellant did not convert from Islam to Christianity in Iran. I find that he has fabricated the entire claim in order to obtain asylum in the UK so that he may remain in the UK and that he is purely an economic migrant."

3. Having made that finding the judge went on to consider the evidence put forward in support of the appellant's claim, including the oral evidence given by the appellant's brother and Mr Deall from the Southampton Lighthouse International Church [35-38]. He rejected his brother's evidence because it was inconsistent. Although he accepted that Mr Deall believed that the appellant was a genuine Christian convert, he placed no weight on his opinion for the following reasons:

"38. Although I am prepared to accept the evidence of Malcolm John Deall who genuinely believes that the appellant is a converted Christian, I have looked at the appellant's claim in the round applying the lower standard of evidence throughout and find for the reasons stated above that the appellant is not a genuine Christian convert and although he may have convinced Mr Deall that he is; and has attended church and meetings and reposted/shared bible verses on his Facebook page; I find that the appellant has done these things in order to bolster his asylum claim in order to remain in the UK."

4. The judge made the following finding relating to the evidence relating to the appellant's claimed religious activity on Facebook:

"39. The appellant has submitted a number of screenshots of posts that he has put on his Facebook page. I note that these screenshot posts are simply sharing Bible verses. There are not any comments, or blogs or things that the appellant has written himself. I note the oldest post is from May 2018. The appellant has posted a total of 8 times in May, June, July, September and October 2018, twice in August 2019 and once in September 2019. I find that this was done in order to bolster his asylum claim and not because he is a genuine Christian convert."

5. The appellant appealed the First-tier Tribunal decision on the following grounds:

- (i) The judge failed adequately to consider the evidence produce by the appellant, and in particular, the evidence given by Mr Deall. At the hearing Mr Deall was cross-examined and explained in some detail how and why he concluded that the appellant was a genuine convert. He also made clear that he had considered whether the appellant may not be genuine. The judge failed to consider the detail of his evidence in order to assess what weight should be placed on his opinion. The judge failed to consider other material evidence, which included several letters from other members of the church who testified to the appellant's attendance and their belief that he was a genuine convert.
- (ii) The judge failed adequately to consider the evidence relating to the appellant's activities on Facebook, which was not confined to the eight posts referred to. There was further evidence in the respondent's bundle. Albeit the posts were not translated it was clear that some of them were likely to have religious content. The letters from members of the church also testified to their knowledge of his postings on Facebook.

6. In response, Mr Clarke made detailed submissions outlining why the evidence produced by the church members would not have made any difference to the outcome of the appeal given the credibility issues already identified by the judge. It was open to him to place little weight on the evidence given by Mr Deall in the circumstances. None of the Facebook evidence would make any difference to the outcome of the appeal and it was open to the judge to find that, if the appellant was not a genuine convert, he could delete those posts before returning to Iran.

Decision and reasons

7. After having considered the grounds of appeal and the oral submissions made by both parties, I am satisfied that the First-tier Tribunal decision involved the making of an error on a point of law and must be set aside.
8. It was open to the judge, indeed he was obliged, to consider the negative credibility findings made by a previous judge in 2008. It was also open to the judge to consider a number of discrepancies in the appellant's evidence which undermined the credibility of his claim to be a genuine Christian convert.
9. However, the appellant made a fresh protection claim based on his continuing attendance at church, which over time, was at least capable of showing a commitment to his claimed faith. In support of the fresh claim he produced a number of letters from various members of the church that

he attends, who testified to their belief that he was committed to the faith. A member of the church who had known him for several years also attended the hearing to give evidence. Counsel's note of the proceedings indicates that he gave detailed evidence to explain why he believed that the appellant was a genuine convert. When cross-examined, Mr Deall made clear that he was conscious of the fact that some people who attend church might not be genuine. He said that there were some members of the church who he had doubts about in the past who he wasn't prepared to attend court to support.

10. Mr Clarke made detailed submissions as to why some of the letters of support might raise more difficulties in terms of the consistency of the evidence. However, they formed part of the overall picture and included information that was relevant to some of the credibility issues identified by the judge. For example, at [31] the judge found that the appellant's explanation relating to lack of attendance during certain periods incredible, but members of the church testified to the fact that they were also aware of the fact that the appellant had a period when he had doubts about his faith. I find that there is force in Mr Chakmakjian's submission that I was now aware of the respondent's submissions as to why no weight should be placed on the evidence, but still had no better understanding of why the judge placed no weight on the evidence because he failed to make any findings.
11. The judge made a clear error with reference to the principles outlined in *Mibanga v SSHD* [2005] EWCA Civ 367. At [34] he made a clear finding rejecting the entirety of the appellant's claim without having considered any of the evidence that might support it. It was only after he rejected the appellant's claim that he turned to the evidence produced by the appellant. He used his negative credibility findings to justify placing no weight on Mr Deall's evidence. No adequate consideration was given to Mr Deall's reasons for believing that the appellant was a genuine convert, nor was his evidence considered in light of a body of other letters of support from other members of the church. The judge's approach to the assessment of the appellant's credibility involved the making of an error of law. The judge also erred in failing to take into account relevant evidence. The criticisms of the evidence put forward by the respondent are not sufficiently compelling to say with any confidence that a judge would be bound to reject the evidence. The matters that went for and against the appellant should have been considered as part of a holistic assessment before coming to a conclusion about the credibility of his claim to be a Christian convert.
12. Although the second ground is less compelling, it is apparent that there was evidence to indicate a greater level of Facebook activity than was considered by the judge. Little weight would have been given to untranslated copies of posts, even if they appeared to indicate some religious content. But material evidence from members of the church who

testified to being aware of his Facebook posts was not considered. As such, the judge erred in failing to consider material evidence.

13. I conclude that the First-tier Tribunal decision involved the making of errors on a point of law. Given that the errors identified go to the heart of the credibility assessment, it was agreed by both parties that the appropriate course of action would be for the matter to be remitted to the First-tier Tribunal for a fresh hearing. I am satisfied that the extent of the findings of fact that need to be remade justify this course of action.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The appeal is remitted to the First-tier Tribunal for a fresh hearing

Signed  Date 14 January 2020
Upper Tribunal Judge Canavan