



IAC-FH-CK-V1

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

Appeal Number: OC/00001/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 February 2016**

**Decision &
Promulgated
On 21 March 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

R A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Ms K Tobin, Counsel, instructed by Ahmed Law Associates

DECISION AND REASONS

Introduction

1. I shall refer to the parties as they were before the First-tier Tribunal and thus the Secretary of State is the Respondent and RA is once more the Appellant.
2. This is an appeal by the Respondent against the decision of First-tier Tribunal Judge Morgan (the judge), promulgated on 6 November 2015, in

which he allowed the Appellant's appeal on the basis that the Respondent's original decision was not otherwise in accordance with the law.

3. The Respondent sought permission to appeal on the basis that the judge was not entitled to reach that conclusion.
4. Permission to appeal was granted by First-tier Tribunal Judge Lever on 30 November 2015.

The hearing before me

5. Ms Tobin informed me that she was instructed to oppose the Respondent's appeal but had nothing further to add.
6. Mr Whitwell relied on the grounds of appeal.

Decision on Error of Law

7. At the hearing I announced to the parties that there were in my view clear errors of law in the judge's decision and that consequently it must be set aside.
8. The judge was not entitled to allow the appeal on the basis that he did and for the reasons he provided. Putting it bluntly, it appears to me on a reading of paragraphs 5 to 8 that the underlying grounds for the allowance of the appeal was that there was a significant amount of evidence submitted by the Appellant that had not been previously seen by the Presenting Officer, and that the Respondent had failed to consider the issue of the Appellant's alleged conversion to Christianity.
9. In respect of the first point, the existence of large amounts of evidence is no basis on which to allow an appeal on the ground that the Respondent's decision was not otherwise in accordance with the law. If anything, the amount of evidence and the inability of a Presenting Officer to have had regard to such evidence might be a ground for adjourning proceedings. It is unclear to me as to why the judge did not take this course of action.
10. On the second point, the judge was in fact demonstrably wrong to have stated that the Respondent had failed to consider the conversion issue. It is unclear whether or not this was before him (it is on my file), but in a decision letter from the Respondent dated 21 December 2012 the matter of conversion is considered in some detail. The Respondent was there dealing with further submissions submitted by the Appellant, and over the course of a number of pages the conversion issue is fully covered. The Respondent had concluded that the representations did not amount to a fresh claim.

11. The twin bases relied on by the judge in reaching his conclusion that the appeal should be allowed on a limited basis were both simply wrong. It is also of some concern that the judge referred to a “pragmatic course” as an apparent justification (at least in part) for allowing the appeal. Taking a pragmatic course of action is not the same as a decision of the Respondent being otherwise not in accordance with the law, and again I make the point that a more appropriate course of action would have been to have adjourned the proceedings to another day.
12. In light of the above the judge’s decision is set aside.

Disposal

13. This appeal clearly needs to be remitted to the First-tier Tribunal, there having been no findings of fact whatsoever by the judge. Both parties were agreed on this course of action.
14. I set out relevant directions, below.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

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.

Directions to the parties

- (1) The Appellant’s representatives are to file and serve a single consolidated bundle, indexed, paginated and containing both subjective evidence and any country information relied upon. This bundle shall be served on the First-tier Tribunal no later than six weeks from the date my decision is promulgated;**

- (2) The Appellant's representatives shall produce a skeleton argument setting out all relevant arguments to be put forward and a schedule of essential reading which must relate to the consolidated bundle referred to above. The skeleton argument shall accompany the consolidated bundle;**
- (3) The consolidated bundle shall replace the existing four bundles of background information currently on file;**
- (4) The issue of jurisdiction relating to this appeal is to be dealt with as follows. This is an out of country appeal relating to a protection claim. The original asylum claim was certified by the Respondent under section 94 of the Nationality, Immigration and Asylum Act 2002. That certificate was not successfully challenged. The right of appeal was exercisable only once the Appellant had left the United Kingdom. Although the appeal was lodged out of time, an extension of time has been granted by the First-tier Tribunal and this is not a live issue. When considering the appeal at the remitted hearing the First-tier Tribunal shall have regard to sections 94(9) and 95 of the 2002 Act.**

Administrative Directions

- (1) This appeal is remitted to the First-tier Tribunal at the Taylor House hearing centre;**
- (2) The remitted hearing shall be heard on a date not before eight weeks from the date my decision is promulgated. The hearing centre shall fix the date;**
- (3) The appeal shall not be heard by First-tier Tribunal Judge Morgan;**
- (4) There shall be a time estimate of two hours for the remitted hearing;**
- (5) No interpreter is required.**

Signed

Date: 4 March 2016

Deputy Upper Tribunal Judge Norton-Taylor