



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

Appeal No PA/00170/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 17 May 2016**

**Determination issued
on 19 May 2016**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ALI REZA TABRIZI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D McGlashan, of McGlashan MacKay, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Iran. On 7 June 2012 he was detected, with his family, at Glasgow airport while travelling to Canada in a false identity. He sought asylum, claiming to be at risk from the Iranian authorities because he had converted from Islam to Baha'ism.
2. First-tier Tribunal Judge D'Ambrosio dismissed the appellant's appeal against refusal of that claim by decision promulgated on 11 July 2013 (case AA/02504/2013). Those proceedings have been exhausted, and that decision stands.
3. On 23 April 2014 the appellant made an assisted voluntary return to Iran.
4. The appellant returned to the United Kingdom and claimed asylum again on 5 May 2015, basing his claim on conversion to Christianity.

5. The respondent refused this second claim on 27th May 2015, declining to accept that the appellant is a genuine convert to Christianity, but holding also that “at highest” he is an ordinary convert, not likely to be an active evangeliser, and so not at risk on return.
6. First-tier Tribunal Judge Fox dismissed the appellant’s appeal by decision promulgated on 22 December 2015.
7. The appellant sought permission to appeal to the Upper Tribunal, on the grounds that the judge failed to take account of his conversion to Christianity; failed to distinguish between his first and second claims; erroneously took Christianity and Baha’ism to be the same or similar faiths; fell for that reason into the error of treating the previous decision not merely as the starting point but also as the endpoint, contrary to the principles of *Devaseelan*; failed to deal with the evidence of supporting witnesses; and referred in error to a statement by the appellant’s wife, when there was no such statement.
8. Permission was granted by the Upper Tribunal on 16 March 2016, on the view that it was arguable that Judge Fox incorrectly considered Baha’ism to be a variant of Christianity, and erred in his treatment of the decision by Judge D’Ambrosio.
9. In a rule 24 response, the respondent submits that paragraphs 18 and 19 of the decision show that the judge was aware that the appellant was now claiming asylum on the basis of conversion to Christianity.
10. That observation is correct as far as those two paragraphs are concerned, but other parts of the decision do suggest that the judge failed to distinguish between the two faiths. At paragraph 14 the judge says, “It was not believed that [the appellant] or his wife had any real interest in converting to Christianity and in particular to the Baha’i faith. If his interest in this faith were in any way credible he (and his wife) would not have left it so long after returning to Iran in picking up the threads of their claimed interest”. That passage shows an element of confusion, which plainly feeds into the extent to which the judge thought the prior decision had settled the issue.
11. Mrs O’Brien acknowledged that the judge failed to deal with supporting evidence, including evidence from a church pastor.
12. Mr McGlashan pointed out certain other errors. The respondent was not represented in the First-tier Tribunal. The judge explains at paragraph 2 that he refused a written application by the respondent for an adjournment. He did not advise Mr McGlashan at the hearing that any such application had been made. Mr McGlashan would not have opposed it. This by itself does not disclose any error of law, but it is indicative of a certain carelessness of approach, which Mr McGlashan illustrated further (a) at paragraphs 4 and 9, where the judge incorrectly says that he heard oral submissions from representatives on both sides; (b) by the judge

references to the “uncorroborated” evidence of the appellant, when evidence had been led from three other witnesses, including the church pastor; and (c) at paragraph 2, where the judge refers to the case being dealt with in the fast track procedure, when it had been removed from that procedure (which has never been followed in hearings in Glasgow).

13. Mr McGlashan further advised that at the outset of the hearing the judge indicated that Mr McGlashan would be permitted to address new matters only, the case having largely been decided by Judge D’Ambrosio and there being therefore formidable difficulties in the way of the appellant. Although there is no ground of appeal in that respect, it would also have been an error to pre-judge to that extent. The prior decision is a significant starting point but no more, and a judge has in the end to assess a case on materials both old and new. However, there is sufficient in the errors which are disclosed by the grounds of appeal on which permission was granted without considering whether further grounds might be entertained.
14. Mrs O’Brien fairly and correctly conceded that there had been legal error, that it was material, and that the appropriate outcome, as sought by the appellant, was to remit to the First-tier Tribunal. She put on record that the respondent adheres to the view that the appellant’s conversion to Christianity is no more than a cynical device.
15. The decision of the first-tier Tribunal is **set aside**. None of its findings are to stand. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the first-tier Tribunal** for an entirely fresh hearing.
16. The member(s) of the first-tier Tribunal chosen to consider the case are not to include Judge Fox or Judge D’Ambrosio.
17. No anonymity order has been requested or made.



17 May 2016
Upper Tribunal Judge Macleman