



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

Appeal Number: PA/00397/2017

THE IMMIGRATION ACTS

**Heard at Birmingham
On 4 September 2017**

**Decision & Reasons Promulgated
On 12 September 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

[A G]

~~[No anonymity direction made]~~

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr A Pipe, instructed by Jemek Solicitors

For the respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Cox promulgated 28.2.17, dismissing his appeal against the decision of the Secretary of State, dated 4.1.17, to refuse his claim for international protection. The Judge heard the appeal on 14.2.17.
2. First-tier Tribunal Judge Gillespie granted permission to appeal on 22.6.17.
3. Thus the matter came before me on 4.9.17 as an appeal in the Upper Tribunal.

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that it should be set aside.
5. In granting permission to appeal, Judge Gillespie stated that the first two grounds of appeal were “fairly arguable,” but did not restrict permission to those grounds alone.
6. There is no merit in the first ground, that the judge failed to consider the appellant’s social media pages at A62-63, purported to be pages promoting Christianity. The pages are photocopies of screenshots from a mobile phone. It is not clear on what social media platform or that these are necessarily the postings of the appellant. They contain only mosaic compilation of generally Christian memes, with no commentary. There is no indication of how this material would be accessible to the Iranian authorities, even if he disclosed his social media account information. That this is apparently the sum total of his social media posting might well be regarded as entirely self-serving and inconsistent with a commitment to Christianity. The photographs relied on at A64 were referred to at [57] of the decision. At [7] the judge confirmed that she had considered all the evidence, including those documents in the bundle. It is not necessary for the judge to address specifically each and every item, or even to schedule the evidence in the decision. The judge can be taken at her word that she had taken it all into consideration. Read as a whole, the decision gave a very careful and comprehensive assessment of the claim to Christian conversion. In all the circumstances, I find insufficient evidence to demonstrate that specific reference to these documents would or could have made any difference to the outcome of the appeal and this ground of appeal appears to be no more than a ‘nit-picking’ trawl through the decision looking for anything and everything that might be used to attack the decision.
7. The second ground is that the judge failed to consider the letters from church members at A16 & 18 of the bundle, which it is said corroborate the appellant’s Christian conversion. Again, the judge has confirmed at [7] and again at [16] consideration of all of the evidence, including the documentary evidence in the appellant’s bundle. The letters in question were not supported by attendance of those persons at the hearing, although a different person, Dr Constantine gave evidence, and thus could only have limited probative value as to the genuineness of the appellant’s conversion, particularly given that these were not persons in authority tasked with assessing the genuine nature of the conversion. In the light of the overall credibility findings, and the conclusion at [61] that the claim had been manufactured to support an untrue account, I do not accept that absence of reference to this evidence can amount to a material error of law.
8. The third ground complains that at [88] & [89] the judge irrationally

attached little weight to the letter from Reverend Isgrove, because it states that the appellant is no longer a Muslim but a Christian. The judge suggested that this betrayed a lack of knowledge of the appellant, as he has never been a practising Muslim. My attention is drawn to [2] where the judge noted that the asylum claim was on the basis of conversion from Islam to Christianity. Read as a whole, the judge was concerned about the strong way in which this letter was drafted, when it would appear that the author had only met the appellant on one occasion. That interpretation was certainly open to the judge from the evidence, even though the letter does not specifically state that was the only occasion. I am also satisfied that it was reasonably open to the judge to criticise the letter on the basis that the way in which it was drafted suggested that the author believed the appellant to have converted from Islam to Christianity, so that he was no longer a Muslim. It is common ground that the appellant was not a practising Muslim, but would have been born into the Islamic faith. In my view the interpretation of the letter and the criticism of the author's bold statements was fully open to the judge and not irrational.

9. The fourth ground criticises the judge's statement at [80] that she did not find that the appellant's answers were "on balance" indicative of an evangelising Christian. It is submitted that the judge erroneously applied a balance of probabilities test to this issue. It is also argued that the judge failed to give the appellant credit for the questions answered correctly in interview.
10. It does appear that the judge erroneously referred to "on balance" when the correct standard of proof is the lower standard of reasonable likelihood. At [14] and [15] the judge set out the correct standard of proof. Given the absence of other references to the correct standard of proof when discussing the evidence and making findings, it cannot be safely concluded that the judge has properly applied the correct lower standard of proof of reasonable likelihood to other findings. The finding in relation to Christianity cannot be separated out from the overall credibility findings and thus on this ground, it would be unsafe to allow the decision to stand.
11. The fifth and final ground asserts that in applying Ali Dorodian v SSHD (01/TH/01537), at [68] the judge applied too high a standard of proof to the appellant's claim, making an erroneous assumption that ministers will be aware of the need to attend. There is no merit in this ground. Despite what the judge stated about ministers being well aware, it is not the responsibility of the ministers, but it is for the appellant's representatives to be aware that ministers should attend to support a claim of conversion. There is no error of law disclosed by this ground.
12. In summary, the decision discloses a material error of law in relation to one ground only, that of the application of the correct (lower) standard of proof. In the circumstances it must be set aside to be remade.

Remittal

13. When a decision of the First-tier Tribunal has been set aside, section 12(2)

of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the findings are on a crucial issue at the heart of an appeal are undermined, as they are in this case, effectively there has not been a valid determination of those issues. The errors of the First-tier Tribunal vitiate all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

14. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusions:

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Consequential Directions

16. The appeal is remitted to the First-tier Tribunal sitting at Stoke, or the appropriate closest venue;
17. The appeal is to be decided afresh with no findings of fact preserved;
18. The ELH is 3 hours;

19. An interpreter in Farsi will be required;
20. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Cox and Judge Gillespie;
21. The appellant is to ensure that all evidence to be relied on is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal will not accept materials submitted on the day of the forthcoming appeal hearing;

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup

Dated