



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

Appeal Number: PA/00421/2017

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 26 October 2017**

**Decision & Reasons Promulgated  
On 01 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[A R]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

Respondent

**Representation:**

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer

For the Respondent: Ms Soltani, Iris Law Firm

**DECISION AND REASONS**

1. I shall refer to the appellant as the respondent and the respondent as the appellant (as they appeared respectively before the First-tier Tribunal). The appellant, [AR], was born on 21 January 1989 and is a male citizen of Somalia. He entered the United Kingdom on a false French identity document in February 2007. He claimed asylum in the same month but his claim was refused and an appeal was dismissed in a decision of the Tribunal promulgated on 4 April 2008. In February 2007, the appellant also pleaded guilty to a charge of use of a false instrument and was sentenced to eight months' youth custody. His deportation was recommended by the trial judge. In September 2014, the appellant was

interviewed in connection with fresh submissions in respect of asylum and human rights. By a decision dated 15 December 2016, the appellant was refused asylum and the decision was also taken to refuse to revoke his deportation order. The appellant appealed against those decisions to the First-tier Tribunal (Judge Rosemary Bradshaw) which, in a decision which is dated 3 May 2017, allowed the appeal on asylum and human rights (Articles 2/3) grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. The appeal turns on a relatively narrow ground. The Secretary of State argues that, notwithstanding having claimed to apply the case of *Devaseelan* [2002] UKAIT 00702, the judge had failed to give reasons for finding the appellant's most recent claim for asylum credible. The appellant's previous claim for asylum had been dismissed and the appellant had not been found credible by the Tribunal as regards his age, place of birth and his clan membership. The previous Tribunal had found that the appellant is an economic migrant. The latest appeal had arisen from the appellant's claim to have become a genuine convert to Christianity. Judge Bradshaw found that claim to be truthful. The respondent had not argued that, if the appellant is a genuine convert to Christianity, he would face a real risk of persecution in Somalia if he were to practise his religion and/or evangelise. Further, the Secretary of State noted that the appellant had failed to attend his first asylum appeal hearing because he claimed to be unwell. The respondent challenges the judge's assessment of that fact.
3. In her submissions, Mrs Pettersen referred to the judge's findings [54] as to whether or not the appellant would practise his faith openly on return to Somalia. The judge had found that the appellant would "not be able to practise his religion otherwise than openly." Whether or not the judge erred in respect of this aspect of the case, I accept Ms Soltani's submission that the judge's assessment of how the appellant is likely to behave as regards his religion upon return to Somalia was not challenged in the grounds of appeal to the Upper Tribunal. Accordingly, I have not examined the judge's finding as to whether the appellant would "not be able to practise his religion otherwise and openly." I have proceeded on the basis that, if the judge was correct to find as a fact that the appellant is a genuine convert to Christianity, he faces risk on return.
4. The judge does not appear to have placed significant weight on the fact that the appellant failed to attend his first Tribunal hearing. At [49], the judge accepted that the Tribunal was "entitled to proceed in his absence when he failed to attend previously and produced no medical evidence to support his claimed ill-health." She also observed that, when cross-examined by the Presenting Officer, he gave contradictory evidence. The judge recorded [49] that "the findings from the hearing on 6 March 2008 are my starting point." She accepted the previous Tribunal's findings of fact regarding the appellant's age, place of birth and his claim for asylum overall including that he was an economic migrant. Further, the judge

makes the point that the appellant's claim in respect of Christianity had not formed any part of the claim considered by the previous Tribunal:

"... the fact that his previous claim was disbelieved and he acted wrongly and dishonestly does not necessarily mean that he cannot be found to be credible in this completely different claim."

5. At [53], the judge found that "the appellant's evidence of his conversion to and continued practise of his Christian faith overall is detailed largely consistent and broadly credible." In that finding, the judge had regard to the witnesses from the church who attended and gave evidence which the judge found "compelling".
6. The question in this appeal before the Upper Tribunal is essentially whether the judge erred in law by finding that the appellant's claim of having converted to Christianity is capable of being believed. I find that the judge did not depart from the principle in *Devaseelan*; she accepted that the appellant's credibility overall had been damaged by the previous Tribunal's findings but she was considering evidence which was wholly different from that previously rejected. The respondent's argument borders on suggesting that, having been found to have given untruthful evidence in the past, the appellant's evidence on any matter could never be believed again. That is not what *Devaseelan* propounds. Quite properly, the judge approached the evidence of the appellant with caution but it was open to her to accept it as truthful. Significantly, her finding that the appellant's conversion is genuine was based not just on the appellant's testimony but also on the 'compelling' evidence of third parties. In the circumstances, I find that the appeal should be dismissed.

## **7. Notice of Decision**

The appeal is dismissed

No anonymity direction is made.

Signed

Date 30 October 2017

Upper Tribunal Judge Lane

## **TO THE RESPONDENT** **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 30 October 2017

Upper Tribunal Judge Lane