



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

Appeal Number: PA/09928/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 24 April 2017**

**Decision &  
Promulgated  
On 2 May 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**[A P]**

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

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms R. Head, Solicitor

For the Respondent: Mr. P. Singh, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, who was born on [ ] 1983, is a national of Iran. It is his case that he crossed over into Turkey by foot on 25 December 2015 and made a clandestine entry into the United Kingdom on 8 March 2016. He claimed asylum on that same day. At his screening interview, he said that he had

had difficulties with the Iranian government. He then attended a substantive asylum interview on 1 September 2016.

2. His application was refused on 4 September 2016. He appealed against this decision but First-tier Tribunal Judge Hussain dismissed his appeal in a decision promulgated on 5 December 2016. The Appellant appealed against this decision on 18 December 2016 and First-tier Tribunal Judge Osborne granted him permission to appeal on 6 March 2017.

## **ORAL HEARING**

3. Counsel for the Appellant stated that she was relying on her grounds of appeal. She noted that in paragraphs 24 - 25 of the decision and reasons the First-tier Tribunal Judge found that the Appellant's account was internally consistent. But she submitted that the First-tier Tribunal Judge had made clear errors in his findings of fact in relation to whether or not the blogs written by the Appellant had been in the public domain. He had also made errors of fact in relation to the circumstances surrounding the Appellant's conversion to Christianity. She also submitted that, although the Appellant had not provided a copy of the email to which photographs of the two summons and one search warrant had been attached, this issue had not been raised at the appeal hearing.
4. She also relied on the fact that the First-tier Tribunal Judge had not made any findings of fact in relation to the Appellant's conversion to Christianity. She submitted that, if it was the case that the Appellant was now attending church, the First-tier Tribunal Judge should have considered whether he would continue to attend church if returned to Iran and whether this would place him at risk. She also noted that the Appellant's blog had a photograph attached to it, which potentially placed him at risk.
5. In response, the Home Office Presenting Officer accepted that there was a date on one of the Appellant's blogs but noted that, in paragraph 26 of his decision and reasons, the First-tier Tribunal Judge had found that the contents of the blog did not appear to be very controversial. In paragraph 27 he also found that the blogs did not appear to have attracted any adverse interests on the part of the Iranian authorities despite posting his blogs in 2013 and not leaving Iran until 2015. He added that there was no evidence of any "views" of his blog and submitted that the Appellant did not have a political profile, which would attract the adverse attention of the Iranian government. He also submitted that the findings made by the First-tier Tribunal Judge were open to him and that, in particular, he had given adequate reasons for his findings about the Appellant's conversion to Christianity.
6. The Home Office Presenting Officer also relied on the fact that the Appellant had said that he was a Muslim in his screening interview, that he had only provided a pro-forma letter from the church in England and that he had not yet been baptised. In reply, counsel for the Appellant submitted

that the reference to the blogs not being dated in paragraph 27 of the decision and reasons was material as the First-tier Tribunal Judge had found that it was “significant” that none of the publications were dated. She also submitted that criticism of Islam cannot reasonably be deemed to be uncontroversial in the context of Iran and that the First-tier Tribunal Judge had failed to refer to key evidence about the Appellant’s conversion.

## THE DECISION

7. First-tier Tribunal Judge Osborne gave permission to appeal on the basis that First-tier Tribunal Judge Hussain had made errors of fact when considering the evidence before him/her.
8. The circumstances in which an error of law could amount to an error of law were discussed in *R (Iran) & Others v Secretary of State for the Home Department* [2005] EWCA Civ 982. In paragraph 28 Lord Justice Brooke considered when an appellate body like the IAT, whose primary role during the relevant period was restricted to identifying and correcting errors of law, could entertain an argument to the effect that the outcome in the lower court was unfair, as a result of a mistake of fact, and that this constituted an error of law which entitled it to interfere.
9. In paragraph 29 he reminded himself of the decision in *E and R v Home Secretary* [2004] EWCA Civ 49 and accepted that the Tribunal could interfere where common law fairness demanded it did so and when a minister has taken a decision on the basis of a foundation of fact, which was demonstrably wrong. At paragraph 64 of that case Carnwath LJ said that there was a common feature of all the cases previously referred to which may be when the Secretary of State had a shared interest with both the particular appellant and with any tribunal or other decision-maker that might be involved in the case in ensuring that decisions were taken on the best information and on the correct factual basis. At paragraph 66 he identified asylum law as representing a statutory context in which the parties shared an interest in co-operating to achieve a correct result but went on to state that he was not laying down a precise code.
10. Furthermore, in *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11 it was held that it was necessary to consider all of the relevant evidence, to assign each part of the evidence appropriate weight and then reach a decision on the overall credibility of the evidence.
11. In paragraph 23 of his decision and reasons the First-tier Tribunal Judge did state that he was aware that he had to have regard to the background evidence but he did not remind himself of the principles contained in *Karanakaran*.
12. In paragraph 27 of his decision and reasons the First-tier Tribunal Judge found that it was “significant that none of these publications show the

date they were on the internet". However, the item entitled *Research Issues - Third Front Reformist Constitute* indicates that it was posted on 7 October 2013. It is also the case that at the bottom of the blogs there were clear URLs ("Uniform Resource Locators"). Therefore, they were in the public domain. This in itself was a potential risk factor; as was the fact that the Appellant's photograph was on the top of one of the blogs.

13. In her Rule 24 response and during oral submissions, the Respondent submitted that, in any event, the First-tier Tribunal Judge had noted that the content of the blogs did not appear to be very controversial. However, it is arguable that the contents of that post were highly political in the context of Iran, as the Appellant states that:

"With regards to the dictatorial environment in Iran and repression and human rights laws of Islam, I have always strived to enlighten and expose the nature of Islam and the Islamic Republic to others.

About the laws of the Islamic Republic of Iran that are based on Islamic laws that in any society where politics and religion are mixed, many problems emerge in that society".

14. The Home Office Presenting Officer relied on the dates of the blogs being some time before the Appellant left Iran but this ignores the fact that it was the Appellant's case that it was a raid on his store room and home, which caused him to flee from Iran.
15. There were also two errors of fact relating to the issue of the Appellant's conversion to Christianity. In paragraph 29 of his decision and reasons the First-tier Tribunal Judge found that "the appellant's evidence in the written statement that his friend Saeed was himself attracted to the faith years earlier when he heard people singing in a house lacks complete plausibility given the inability for Christians to practice their faith openly in Iran". But in question 80 in his substantive asylum interview, the Appellant was asked, "... before he told you about Christianity were you aware he was a Christian?" The Appellant replied, "I knew from some time ago he used to live in Turkey, on his return he told me he had converted". The clear inference from this answer is that Saeed had converted to Christianity in Turkey.
16. Furthermore, in paragraph 29 of his decision and reasons the First-tier Tribunal Judge found that the Appellant's evidence about when he was introduced to Christianity, as a convert, was incoherent and inconsistent. However, when reviewing this evidence the First-tier Tribunal Judge failed to take into account the fact that it was not only that Saeed had told him that "Jesus had performed many miracles". It was also that it was the Appellant's case that after hearing this, he had begged God to cure his child and a few hours later doctors had given him good news about his child.

17. The Home Office Presenting Officer relied on the fact that the Appellant had given his religion as Islam in his screening interview. However, I remind myself of the findings in paragraph 19 of *YL (Rely on SEF) China* [2004] UKIAT 145, where the Tribunal held that:

“When a person seeks asylum in the United Kingdom he is usually made the subject of a ‘screening interview’ (called, perhaps rather confusingly a “Statement of Evidence Form – SEF Screening-). The purpose of that is to establish the general nature of the claimant’s case so that the Home Office official can decide how best to process it. It is concerned with the country of origin, means of travel, circumstances of arrival in the United Kingdom, preferred language and other matters that might help the Secretary of State understand the case. Asylum seekers are still expected to tell the truth and answers given in screening interviews can be compared fairly with answers given later. However, it has to be remembered that a screening interview is not done to establish in detail the reasons a person gives to support her claim for asylum. It would not normally be appropriate for the Secretary of State to ask supplementary questions or to entertain elaborate answers and an inaccurate summary by an interviewing officer at that stage would be excusable. Further the screening interview may well be conducted when the asylum seeker is tired after a long journey. These things have to be considered when any inconsistencies between the screening interview and the later case are evaluated”.

18. Furthermore, in order to comply with *Karanakaran*, this one answer needs to be viewed in the context of the significant amount of evidence which indicated that he had converted to Christianity.
19. For these reasons I find that First-tier Tribunal Judge Hussain made a clear and material errors of fact and law in his decision and reasons.

## **DECISION**

20. The appeal is allowed.
21. First-tier Tribunal Judge Hussain’s decision and reasons are set aside.
22. The appeal is remitted to the First-tier Tribunal to be heard by a First-tier Tribunal Judge other than First-tier Tribunal Judge Hussain.

**Nadine Finch**

Signed

**Nadine Finch**

Date 24 April 2017

Upper Tribunal Judge Finch