



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

Appeal Number: PA/12242/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 6<sup>th</sup> July 2017**

**Decision & Reasons  
Promulgated  
On 12<sup>th</sup> July 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

**H.K.N.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Hodson, Counsel

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

**DECISION AND REASONS**

1. The Appellant is a citizen of Iran born [ ] 1985. He has appealed with permission of the First-tier Tribunal (Judge Andrew) against a decision of First-tier Tribunal Judge M A Khan promulgated on 5<sup>th</sup> January 2017, dismissing his appeal against the Respondent's decision of 24<sup>th</sup> October 2016 refusing to grant him asylum/humanitarian protection.
2. The core of the Appellant's claim to asylum revolves around his conversion to Christianity. In summary, he claims he came to the attention of the authorities in Iran following an incident concerning his dog. The Appellant became embroiled in a scene with the Basiji who were seeking to impound the dog. The appellant who was enraged at this started hurling insults at the Basiji which were anti-Islamic in nature.
3. This resulted in the authorities raiding the Appellant's computer shop and seizing his computer. The difficulty for the Appellant was that prior to the incident with his dog the Appellant had expressed an interest in Christianity and certain details relative to this interest were stored on his computer. So far as the Appellant was concerned therefore the authorities were now in possession of material which would amount to evidence of apostasy.
4. He therefore left Iran via Turkey and arrived in the UK. Since his arrival here he has been baptised as a Christian by the Reverend Tutton of the Free Church of Hampstead Garden Suburb. The Rev. Tutton attended the FtT hearing to give evidence on the Appellant's behalf.
5. The Respondent disbelieved the Appellant's claim, firstly of why he exited Iran and secondly his conversion to Christianity. The Respondent considered that the conversion to Christianity was an attempt to bolster a weak claim to asylum.
6. The appeal came before the First-tier Tribunal and it is right to say that the judge found himself without the assistance of the Respondent who did not field a presenting officer at the hearing. The judge took oral evidence from the Appellant and the Rev. Tutton.
7. So far as his decision is concerned, having set out the issues before him and noting the oral evidence, the judge concluded his decision by making adverse credibility findings on the Appellant in [30] to [32]. With regard to the Reverend Tutton however, although the judge sets out his evidence in [24] and [25], there is no analysis of this evidence other than to summarise it at [33] under the heading of "Findings of Credibility". The judge went on to dismiss the appeal by saying at [34]:

"I have to consider whole of the appellant's evidence (sic), the fact that I do not find the appellant's evidence credible or consistent with regards to his claimed event in Iran, he did not mention the core of his asylum claim in his Screening interview and the fact that he was vague and evasive about why he did not mention these things at the

earliest opportunity, I do not accept that the Appellant has genuinely converted for reasons stated by him (sic).”

The judge then sums up by saying the following at [35]:

“I find that the appellant has simply fabricated the whole evidence in order to support his application for asylum. He has changed his version of evidence with regards to the incidents in Iran, I cannot come to any other conclusion but that the appellant’s story is a fabrication throughout (sic).”

The judge went on to dismiss the appeal.

8. The Appellant sought permission to appeal. He submitted grounds drafted on his behalf by his representatives. There are three grounds all concerning the evidence put forward and the conduct of the hearing.
  - The judge’s complaint that the Appellant was “vague and evasive” is simply incorrect. The judge kept repeatedly questioning the Appellant concerning certain details at his screening interview and it is unfair to quantify the Appellant as “vague” simply because he kept giving the same answer.
  - The judge rejects the Appellant’s account concerning the reaction of the Basiji to the insults thrown at them over the incident concerning the Appellant’s dog. The FtT enters into speculation and has misunderstood the position of the Basiji and therefore wrongly concludes that the Appellant is inconsistent.
  - The judge failed to take the positive evidence of Reverend Tutton into account adequately or at all when assessing the Appellant’s core claim to have converted to Christianity.
9. Permission to appeal was granted by First-tier Tribunal Judge Andrew. The relevant part of the grant of permission is as follows:
  - “1. The Appellant seeks permission to appeal, in time, against a Decision of the First-tier Tribunal (Judge MA Khan) promulgated on 5<sup>th</sup> January 2017 whereby it dismissed the Appellant’s appeal against the Respondent’s decision to refuse to grant asylum.
  2. The core of the Appellant’s claim is his conversion to Christianity. In the decision the Judge does not give sufficient reasons for finding the Appellant to be incredible in the claims of his conversion and why the evidence of Reverend Ian Tutton does not add to the Appellant’s credibility of such a conversion.
  3. I find there is an arguable error of law.”
10. The Respondent filed a Rule 24 response opposing the appeal, arguing:

- that the FtT gave sufficient reasons for finding against the credibility of the Appellant;
- that the FtT attaches little weight to the evidence given by the Reverend Tutton, but what weight to attach to evidence given by a witness is one open to the Tribunal Judge.

### **Error of Law Hearing**

11. Mr Hodson appeared for the Appellant and Mr Avery for the Respondent. At the start of the hearing I indicated to both representatives that having read the papers, my preliminary view was that it was difficult to see that there were sufficient reasons given for the FtT Judge's finding that the Appellant's claim of his conversion to Christianity was wholly fabricated. This was on the basis that I could see no meaningful analysis of the Rev. Tutton's evidence. I also expressed concern at my reading of [21]. It could be perceived that the judge had closed his mind to evidence when he stepped in and repeated a question several times despite getting the same answer each time. Whilst it is perfectly proper for a judge to seek to clarify a matter, it could be perceived as unsatisfactory to repeatedly question a witness when the same response is elicited. I asked Mr Avery therefore to address me in the light of these indications.
12. Mr Avery's submissions were succinct. He submitted that the judge had considered all the elements of the appeal and had made an overall sustainable decision. The weight of any piece of evidence was a matter for the judge and the decision should therefore stand.
13. At the end of Mr Avery's submissions I heard briefly from Mr Hodson, following which I announced my decision that I was satisfied that Judge Khan's decision contained error requiring it to be set aside and remade.
14. My principal reason for this finding is in line with the concise grant of permission. It has always been a core part of the Appellant's claim that he has converted to Christianity. In my judgment the questioning by the judge around the apparent inconsistency in the screening interview means that the judge closed his mind to other available evidence. For example he makes no assessment of the positive evidence in the Appellant's interview wherein he demonstrated that he clearly had knowledge of the Christian religion.
15. Equally I am satisfied that sufficient reasons have not been shown as to why the judge overlooked relevant evidence, nor why the evidence of the Rev. Tutton does not add to the credibility of the Appellant's claimed conversion. Those omissions are clearly material and I find no alternative but to set aside the decision of First-tier Tribunal Judge M A Khan and remit the matter to the First-tier Tribunal for a full and fresh hearing. Nothing can be preserved from Judge Khan's decision.

**Notice of Decision**

The decision of Judge M A Khan promulgated on 5<sup>th</sup> January 2017 is hereby set aside. The matter is remitted to the First-tier Tribunal (not Judge M A Khan) for a fresh rehearing.

**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.

Signed

C E Roberts

Date

12 July 2017

Deputy Upper Tribunal Judge Roberts