



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/13972/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 1 August 2017**

**On 15 August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**R N (IRAN)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Saldanha, Solicitor, Duncan Lewis & Co Solicitors  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Loughridge sitting at Newport on 26 January 2017) dismissing his protection claim which was brought on the ground that he was a Christian convert who had come to the adverse attention of the authorities in Iran as the result of attending a house church. The First-tier Tribunal made an anonymity direction in favour of the appellant, and I consider that the anonymity direction should be continued for these proceedings in the Upper Tribunal.

## **The Reasons for the Grant of Permission to Appeal**

2. On 23 May 2017 First-tier Tribunal Judge Hodgkinson granted permission to appeal for the following reasons:

2) The grounds argue that the Judge fell into error by failing to take into account material evidence and by failing to attach appropriate weight to the evidence of one Reverend Rees ([50], [54] and [56] of the decision referred to).

3) It is generally a matter for the Judge as to what weight he or she places on relevant evidence, subject to such evidence being considered satisfactorily. In the present instance, it is *arguable* that the Judge's assessment of the evidence relating to the appellant's claimed Christianity in the United Kingdom, and his assessment of the weight to be given to Reverend Rees' evidence, is flawed. Permission is accordingly granted on all grounds pleaded.

## **The Rule 24 Response**

3. On 8 June 2017, Paul Duffy of the Specialist Appeals Team settled a Rule 24 response opposing the appeal. He pleaded that the grounds of appeal were simply disagreements with the findings of the Judge. The findings were open to the Judge on the evidence before him. Questions of weight were matters for the Judge, and it was open to the Judge to place the weight that he did on the evidence of the Pastor.

## **The Application to Vary the Grounds of Appeal**

4. On 31 July 2017, the appellant's solicitors notified the Upper Tribunal in writing that they were applying under Rule 5(c) to vary the notice of appeal so as to include the following:

The assessment of the appellant's credibility by the Judge of the First-tier Tribunal is flawed through failure to make a finding on the evidence of the appellant's father-in-law, [AM]. Although the evidence of this witness is set out at paragraph 24 of the determination, the Judge makes no findings on it. The evidence of the witness was material to the appellant's evidence of conversion to Christianity.

## **The Hearing in the Upper Tribunal**

5. At the hearing before me to determine whether an error of law was made out, Mr Saldanha sought permission to advance the additional ground of appeal set out in the letter of 31 July 2017. He submitted that the new ground of appeal was "**Robinson** obvious".
6. He had not attended the hearing in the First-tier Tribunal. The appellant had been represented by Counsel at the hearing, and the same Counsel had settled the grounds of appeal to the Upper Tribunal.

7. He explained that AM was a fellow asylum seeker, and that AM's appeal against the refusal of his protection claim had been dismissed by the First-tier Tribunal in May 2017. I asked him whether the appellant had been a witness in AM's asylum appeal, just as AM had been a witness in the appellant's asylum appeal. Mr Saldanha answered this question in the negative.
8. Mr Tarlow opposed the application for permission to vary the grounds of appeal, and I ruled: (a) that I would I reserve my decision on whether permission should be granted; and (b) that, in the interim, it was in accordance with the overriding objective for Mr Saldanha to be permitted to develop the new ground of appeal *de bene esse*.
9. Mr Saldanha submitted that the evidence of AM corroborated crucial aspects of the appellant's account of how events unfolded in Iran, and the Judge's failure to make a finding on AM's evidence was a fatal flaw which rendered unsafe his overall assessment of the appellant's credibility, and in particular the credibility of his claim to be a genuine Christian convert, as Reverend Rees believed him to be. He relied on **AK (Failure to assess witness's evidence) Turkey [2004] UKIAT 00230**. In reply, Mr Tarlow adhered to the Rule 24 response settled by his colleague.

### **Discussion**

10. Rule 5(3)(c) of the Tribunal (Upper Tribunal) Rules 2008 confers upon the Upper Tribunal the jurisdiction to permit or require a party to amend a document. I decline to exercise the jurisdiction in this case, for two reasons.
11. Firstly, I do not consider that the issue can reasonably be categorised as a **Robinson** obvious one, in circumstances where presumptively competent Counsel who appeared at the hearing settled the application for permission to appeal.
12. The entire focus of the permission application settled by Counsel is on the Judge's treatment of the evidence of the Reverend Rees whom she describes as being "*an independent witness who has had first-hand knowledge and involvement of A's activities and involvement with the church since his arrival in the UK.*"
13. Counsel called AM as a witness to give evidence which supported the appellant's account of becoming involved in a house church in Iran, and his account of recruiting his father-in-law AM to join him at the same house church. Having reviewed the decision of the First-tier Tribunal Judge, it did not appear to Counsel that the way in which the Judge had addressed the potentially corroborative evidence of AM disclosed an arguable error of law.
14. Secondly, the Rules require the appellant to apply first to the First-tier Tribunal for permission to raise a new ground of appeal, as Rule 21(2) states that a person may apply to the Upper Tribunal for permission to

appeal to the Upper Tribunal against the decision of another Tribunal only if – (a) they have made an application for permission to appeal to the Tribunal which made the decision challenged; and (b) that application has been refused or has not been admitted or has been granted only on limited grounds.

15. However, although I refuse permission to vary the grounds of appeal, I will treat the issue raised by Mr Saldanda as potentially buttressing the case pleaded by Counsel that the Judge failed to consider “*material evidence*”.
16. Although not cited to me, I have had regard to **Muse & Others v Entry Clearance Officer [2012] EWCA Civ 10** on challenges to the adequacy of a judge’s reasons. In **South Bucks District Council v Porter (2) [2004] UKHL 33**, cited with approval by the Court of Appeal at paragraph 33, Lord Brown said:

The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the ‘principal important controversial issues’, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, not to every material consideration.

17. In **AK**, the IAT criticised an experienced Adjudicator for not giving any indication as to the nature or content of the evidence given by five supporting witnesses, and for failing to make any assessment as to the credibility or otherwise of their evidence, or to give any reason for arriving at his assessment.
18. In this appeal, there were two supporting witnesses, of whom Reverend Rees was by far the most important, as he was an independent witness.
19. With regard to the evidence of Reverend Rees, there is no complaint along the lines of the Judge failing to engage with his evidence or to make findings on its probative value. On analysis, the error of law challenge pleaded by Counsel is one of perversity. She pleads that the Judge ought to have attached “*appropriate weight*” to the evidence of Reverend Rees because (a) he was an independent witness, (b) the decision to baptise the appellant very quickly had been vindicated by the appellant’s subsequent active involvement with his church; and (c), Reverend Rees had refused to support others in claiming asylum where he had concerns about whether their asylum applications were genuine.
20. On a fair reading of the Judge’s detailed and thoughtful analysis of the evidence of Reverend Rees, and the other evidence bearing upon the appellant’s activities since arriving in the UK (contained in paragraphs 49-

56), I find there is no merit in the case advanced by Counsel, and Mr Saldanha did not seek to persuade me otherwise.

21. Mr Saldanha focused his attention on paragraph [57], where the Judge said that it followed from his observations about the appellant's activities in the UK, that, "*in determining whether the appellant's claim is genuine the focus should be on his life before he left Iran.*"
22. As I have previously highlighted, the error of law challenge advanced by Counsel begins and ends with the findings made by the Judge at paragraphs [50]-[56]. She mounts no error of law challenge to the Judge's findings on the appellant's life before he left Iran.
23. It is beyond argument that there is no express finding by the Judge in paragraphs [58] onwards about the credibility of the evidence given by AM. However, I consider that it is implicit in what the Judge says at paragraph [60] that he is rejecting the evidence of AM about his attendance at the house church, alongside his rejection of the evidence of the appellant on the same issue.
24. At paragraph [24], the Judge records AM as having stated in cross-examination that he attended the house church approximately 10 times; that he did not need to speak to anyone before attending, because the appellant vouched for him; and that the appellant had spoken to some of the other members beforehand, and explained that AM wanted to go, and had made the arrangements. At paragraph [60], the Judge said:

The key issues, in my view, are the plausibility arguments put forward by the respondent regarding: M disclosing so readily to the appellant that he had converted to Christianity and was attending a house church; the lack of vetting of the appellant before he attended; *the lack of vetting of the appellant's father-in-law before he attended* (my emphasis); the way in which the response of the informer attending the meeting on 29 April 2016 was to pray that he had changed; and the fact that M was arrested individually, 2 days after that meeting.

25. At paragraph [72], the Judge addressed another aspect common to both their accounts, which was the plausibility and hence credibility of them not being all arrested at a meeting of the house church, rather than the authorities only targeting M on a different occasion, so as to give other members of the house church the opportunity to escape. The Judge said as follows:

I cannot, of course, completely rule out the possibility that M was arrested as an individual because the objective evidence does indicate that sometimes individuals are arrested on their own with a view to being recruited as an informant. However, I find that to be a highly improbable scenario after just one meeting attended by the informer. As far as I can see there is only a single reference in the Danish Report to members of house churches being arrested individually, in contrast to numerous references to the authorities conducting the raids on meetings and arresting all the members together.

26. The Judge continued, in paragraph [73], as follows:

In the light of these two key findings much of the appellant's account unravels. *For example, it inevitably follows that I reject the appellant's claim that he went into hiding that day with his father-in-law, and that his house was subsequently raided by the authorities* (my emphasis).

27. It is apparent from the foregoing that the Judge has engaged with the evidence of AM as well as with the evidence of the appellant. I consider that the Judge has given adequate reasons for finding the appellant's claim of past persecution in Iran to be not credible, and in so doing he has given adequate reasons for finding AM's claim (which was essentially identical to that of the appellant) to be also not credible – and hence, by necessary implication, that AM's account did not credibly support the appellant's account.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

This appeal to the Upper Tribunal is dismissed.

### **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 their 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

Date 14 August 2017

Judge Monson

Deputy Upper Tribunal Judge