



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

Appeal Number: PA/05444/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 November 2018**

**Decision & Reasons  
Promulgated  
On 12 December 2018**

**Before**

**MR C M G OCKELTON, VICE PRESIDENT  
DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**ALIREZA [A]**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms L. Profumo, instructed by Migrant Legal Project.

For the Respondent: Mr C. Howells, Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. The appellant, a national of Iran, appealed to the First-tier Tribunal against the respondent's rejection of his asylum claim. Judge Boyes dismissed his appeal. He now appeals with permission to this Tribunal.
2. The grounds of appeal to this Tribunal are somewhat discursive. Permission was granted specifically on a ground going to procedural fairness. So far as that ground is concerned it has, so far as we can see, no factual basis at all; and Ms Profumo, who attempted to rely on it, had

no evidence to support it other than what was said to be Counsel's attendance note, not accompanied even by a statement of truth identifying it, and which had not been served on the respondent. In our view this ground should not have been raised, and if it was not going to be properly, fairly and professionally pursued it should have been promptly withdrawn.

3. The judge who granted permission said, without giving any reason in relation to the other grounds, that "the grounds may be argued". One of the grounds pleaded, to which Ms Profumo came belatedly, is of merit.
4. The appellant, whose case is that he is at risk as a Christian convert, has always said that he is married, with a son. Part of the basis of his claim is that his wife comes from a strictly observant Muslim family. The Secretary of State treated him as a married man and the fact is simply set out in the letter of refusal, without comment. Judge Boyes considered the credibility of the appellant's account as a whole, as he was bound to. In relation to his family status, the judge remarked that the appellant's account of his marriage and his wife's family was "the most puzzling aspect" of his account. He could not see that the family would have allowed their daughter to marry a person who was uncommitted to Islam or that the appellant's wife could, given her upbringing, share his religious nonchalance. He decided that he was not "satisfied that the appellant is even married". He said that there was "no evidence at all of a wife and child".
5. That was clearly wrong. There was evidence of a wife and child: the appellant had spoken of them in his evidence; he had also (consistently) given details of them in two previous interviews; and they are noted on his Iranian identity card which was in evidence before the judge and which the judge regarded as genuine. So it seems clear that in making his findings on the appellant's family status the judge failed to take into account relevant evidence. In addition, it is not easy to see that it was fair to investigate this issue without further input, bearing in mind that the status of the appellant as a married man with a son was part of the data accepted by the respondent. It may be that if the evidence of the marriage had been nearer to the front of the judge's mind he would not have had the worries he expressed in his decision. It may be that if he had given an indication at the hearing that he was concerned about the reality of the marriage his attention would have been drawn to the evidence of it. We do not know. A judge is certainly entitled to make his determination on all disputed points, on the basis of the evidence before him, without taking the parties through his doubts and seeking specific explanations, for it is the parties' job to establish their cases; but that does not mean that the judge is entitled to reach his own conclusion on points not in dispute, by failing to look at the evidence before him.
6. This was an appeal that depended to a large extent on the appellant's personal credibility on a number of issues. An unsupportable finding on

the credibility of the evidence on a central feature of the appellant's personal identity and circumstances would be bound, in our judgment, to infect the rest of the judge's assessments and findings of fact. For this reason we are satisfied that this appeal will need to be considered afresh by a different judge.

7. Because the whole of the evidence will need to be considered again, it is more convenient and likely to be more expeditious for the matter to be remitted to the First-tier Tribunal.
8. For the foregoing reasons we set aside the decision of Judge Boyes. We remit the appellant's appeal for determination afresh by the First-tier Tribunal, differently constituted.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 26 November 2018.