



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06321/2017

THE IMMIGRATION ACTS

Heard at Field House
On 16 February 2018

Decision & Reasons Promulgated
On 5 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

YS

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Harris, of Counsel, instructed by Elder Rahimi Solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Boardman (the judge), promulgated on 11 August 2017, in which he dismissed the appeal on all grounds. That appeal arose from the Respondent's decision of 19 June 2017, refusing protection and human rights claims made by the Appellant on the basis of his conversion to Christianity.

The judge's decision

2. The judge heard evidence from the Appellant and three witnesses. The judge set out in detail their evidence and submissions at [13] to [74]. The judge was not persuaded the Appellant is a converted Christian. The judge was plainly not impressed by the Appellant's own evidence and that of the witnesses called on his behalf attesting to his conversion. The judge noted inconsistencies in the evidence of the Appellant which he found was vague and lacking in detail and concluded that the evidence of two witnesses was vague, lacking in detail and inconsistent, and in respect of all witnesses and indeed the witness that he had not heard from, the judge noted that they were good friends of the Appellant and would "naturally" wish to support him. The judge thus concluded that this added little corroborative weight to the Appellant's own evidence.
3. The judge noted that the Appellant used the internet to propagate Christianity and noted that most of the Facebook transcript had not been translated into English and that the two pictures endorsed with references to the New Testament added little corroborative weight to the Appellant's evidence. The judge was further not persuaded that the Gmail evidence was evidence of a genuine protestation by the Appellant of his faith, but rather a creation to support a claim for asylum. The judge also considered the Baptism certificate and a purported letter from a Pastor and identified various inconsistencies and omissions in that evidence and found that they also added little corroborative weight to the Appellant's evidence. The judge finally observed that no independent witness had attended the hearing to support the claim.

The grounds of appeal and grant of permission

4. The grounds assert that the judge erred in that he adopted an unsustainable approach to the evidence of the witnesses'; that his assessment of the documentary evidence was erroneous and that he failed to resolve an issue as to whether the existence of the Appellant's Facebook account containing Christian content would expose him to consequent risk on return.
5. Permission to appeal was granted by First-tier Judge Shimmin on 1 November 2017 on all grounds.
6. The Respondent in a Rule 24 reply dated 8 January 2018 opposed the appeal.

Decision on error of law

7. I have considered the helpful submissions made by both representatives. While Mr Wilding made a valiant attempt to defend the judge's decision, I am persuaded that the judge erred in law for the following reasons.
8. The evidence in any appeal must be assessed in the round. I fully appreciate that the judge has stated that this is what he did. However, the contents of paragraph 78 give rise to real concerns as to what approach was in fact adopted in relation

to the witnesses' evidence. There is clear reference to the adverse findings relating to the Appellant's own evidence in this paragraph, and such findings were clearly something that the judge was bound to take account of. When it comes to the evidence of the witnesses though, the judge makes comments which give rise to concerns that he rejected the evidence either on the sole basis that they were known to the Appellant or strongly implies that he was significantly influenced by that fact in the rejection of their evidence.

9. I reach that conclusion because while the judge noted a deficiency in the evidence of two of the witnesses namely, Ms K and Mr H, respectively, the judge also rejected their evidence on the basis that it was "natural" as good friends that they would "wish to give evidence in support" and found "as such" that their evidence added little corroborative weight to the Appellant's own evidence. In respect of the witness Mr T no other reason was given for rejecting his evidence other than "he is a good friend of the Appellant" and it was "natural that he would wish to give evidence in support". I consider that the judge's treatment of Mr T's evidence, in particular, demonstrates that he over emphasised in his analysis the significance of the relationship between the Appellant and witnesses. The fact that witnesses are not wholly independent of an Appellant does not in and of itself mean that their evidence should be rejected or considered to be self-serving, an approach which is not of itself justification for the rejection of potentially material evidence. This much is clear from the recent Upper Tribunal decision in SS [2017] UKUT 164 (IAC).
10. I also note the following. Having read the relevant witness statements for myself, I am satisfied that all witnesses had material evidence to give regarding the Appellant's conversion and this adds to my concerns about the judge's treatment of the witnesses' evidence overall and especially that of Mr T. The witness evidence was direct in nature, and capable of supporting the Appellant's claim.
11. Overall, I am satisfied that the judge erred in relation to his approach to the witnesses' evidence.
12. I have considered whether the error of approach is material in this case. It is quite true that the judge made several findings against the Appellant, but having said that, if the witnesses' evidence had been accepted, it clearly provided support for the Appellant's claim to be a Christian and was capable of affecting the outcome of the appeal. I thus find the judge's error is material in this regard.
13. The above I consider is sufficient to render the decision unsafe. It is not therefore necessary to traverse the other grounds raised in the grounds of appeal. In light of the above I set aside the judge's decision.

Disposal

14. Both representatives were agreed that if I were to find a material error of law this appeal would have to be remitted to the First-tier Tribunal for a complete re-hearing. Having regard to the nature of the error I deem it appropriate to take this course of action.

15. The appeal is therefore remitted to the First-tier Tribunal.

Notice of Decision

I set aside the decision of the First-tier Tribunal.

I remit this appeal to the First-tier Tribunal for rehearing on all issues by a judge other than Judge Boardman.

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

Date: 16 April 2018

Deputy Upper Tribunal Judge Bagral