



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02158/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 4th September 2019

Decision & Reasons Promulgated
On 16th September 2019

Before

Upper Tribunal Judge Chalkley

Between

SHAMERAN [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr Wood of Immigration Advice Service Ltd

For the Respondent:

Mr Bates, a Senior Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. The appellant is a citizen of Iran who was born on 19th March 1994. He arrived in the United Kingdom on 3rd December 2010 and claimed asylum. That claim was refused on 17th June 2011 but, because the appellant was a minor at the time, discretionary leave was granted until 19th September that year. A further application for leave to remain was made on 13th September 2011 and was refused by the respondent on 4th April 2012. The appeal against that decision was dismissed by First-tier Tribunal De Haney on 20th June 2012.

2. Permission to appeal to the Upper Tribunal was subsequently refused and appeal rights were exhausted on 25th October 2012. Further representations were made on behalf of the appellant on 27th February 2015 and they were refused by the respondent on 10th July 2017.
3. Still further representations were made in December 2018 and the appellant made a fresh claim for asylum under paragraph 353 based on new evidence which post-dated his original application. The application was refused by the respondent on 25th January 2019 and the appellant appealed to the First-tier Tribunal. His appeal was heard in Manchester on 10th April 2019 by First-tier Tribunal Judge Buckley.
4. At paragraph 25 of the judge's determination Judge Buckley accepted that the previous determination promulgated in 2012 was the starting point for the consideration of this appeal in accordance with *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * UKIAT 00702 [2002] UKIAT 00702*. Unfortunately, having accepted that, the judge failed to consider the new evidence placed before him properly. He failed to attach any weight to the KDPI letters adduced, because the previous claim had been found not to be credible.
5. Mr Bates accepted that the judge should have given more reasons for not attaching weight to the KDPI letter, but as far as the appellant's witness is concerned, he was in fact granted asylum on the basis of being a Christian convert and not for any political reasons.
6. He agreed, however, with Mr Wood that the determination should be set aside and that the matter should be reheard by the First-tier Tribunal by a judge other than First-tier Tribunal Judge Buckley or First-tier Tribunal Judge De Haney. The determination is set aside and the appeal remitted to the First Tier Tribunal. The appellant has effectively been denied a fair hearing by the judge's failure to properly follow and apply the decision in *Devaseelan*.
7. Two hours should be allowed for the hearing of the appeal and a Kurdish Sorani speaking interpreter will be required.

Richard Chalkley

Upper Tribunal Judge Chalkley Date:6 September 2019