



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

Appeal Number: PA/07784/2019

THE IMMIGRATION ACTS

Heard at Bradford by Skype for business

**Decision & Reasons
Promulgated**

On the 30 October 2020

On 15 December 2020

Before

UPPER TRIBUNAL JUDGE REEDS

Between

**BA
(ANONYMITY DIRECTION MADE)**

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O. Sobowale, Counsel instructed on behalf of the appellant

For the Respondent: Mr M. Diwnycz, Senior Presenting Officer

AMENDED DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Saudi Arabia, appeals with permission against the decision of the First-tier Tribunal (Judge O'Hagan) (hereinafter referred to as the "FtTJ") who dismissed his protection

and human rights appeal in a decision promulgated on the 17 April 2020.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. 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. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The hearing took place on 30 October 2020, by means of *Skype for Business*, which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video as did the appellant's sister so that she could listen and observe the hearing. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.
4. I am grateful to Mr Sobowale and Mr Diwnycz for their clear and helpful oral submissions.

Background:

5. The history of the appellant is set out in the decision letter and the decision of the FtTJ.
6. In 2001, the appellant was involved in road traffic accident where he suffered a fractured skull and bleeding into the brain with a resultant brain injury. He has spent the majority of time over the years that followed receiving inpatient hospital care. In 2015, he was diagnosed with frontal lobe damage and schizoaffective disorder with symptoms of schizophrenia.
7. On 14 September 2008, the appellant applied for leave to enter as a dependent of his father. The application was refused, and he reapplied in his own right on 27 September 2008. The second application was granted, and he entered the United Kingdom with leave as a student on 30 September 2008 that leave being valid until 11 June 2009. On 6 June 2009, he applied for further leave as a student which was refused and whilst he appealed, the appeal was withdrawn on 9 October 2009.

8. On 10 November 2009 he applied for further leave and it was granted until 26 October 2010 and there followed further applications subsequently, the last of which was granted until 30 November 2016.
9. The appellant made a claim for asylum on 10 November 2016 on the basis that he would be at risk on return to Saudi Arabia because he had converted to Christianity and also as a result of his mental health. No decision was made however because there were criminal prosecutions pending against him at that time.
10. On 13 April 2018, the respondent was notified that the appellant had been convicted of an offence of interfering with a vehicle for which he received six weeks imprisonment. The notification led to the respondent reviewing the appellant's offending history. It was found that he had accrued nine convictions 18 offences between 31 March 2010 and 9 April 2018. This led to the respondent beginning deportation proceedings. In response to the stage I deportation letter, the appellant's solicitors made submissions based on his religious beliefs and his mental health. Whilst this was under consideration the appellant received further convictions. Overall, the appellant received 13 convictions for 27 offences since being in the United Kingdom. The FtTJ set out the convictions and the chronology of them at paragraph [10] of his decision
11. In a decision letter of 3 July 2019, the respondent refused his protection and human rights claim in the context of his deportation. The decision is set out in 17 pages and it is not necessary to set out the entirety of that decision; some of which has not been in dispute. In that decision the respondent considered the claim that it would be at risk because of his mental health and consideration was given to various medical reports that were exhibited in the respondent's bundle. The conclusion reached was that the documented instances of harm were instances of self-inflicted harm rather than mistreatment by the authorities in Saudi Arabia. It was not accepted that he would be at risk of harm as a result of comments made in the context of his mental illness in relation to the state authorities. It was further not accepted based on the objective country material that he would be unable to access treatment for his mental health problems given that he had access to such treatment in the past.
12. In respect of his protection claim and his claimed conversion to Christianity, whilst it was accepted that there is no religious freedom in Saudi Arabia and Christians face persecution there as did apostates, it was not accepted that the appellant would be at risk as it was not accepted that the evidence supported the claimed conversion and that at its highest respondent accepted that he displayed some low level interest in Christianity. The decision letter made reference to the appellant's interview and the responses he had given concerning the Christian faith.

13. In relation to his deportation, the Secretary of State considered that the appellant was a persistent offender deportation would be conducive to the public good. When considering the aspects identified in relation to his private life and the public interest, the respondent concluded that there were no factors which were sufficiently identified to outweigh the public interest in his deportation.
14. The appellant appealed that decision, and his appeal came before the First-tier Tribunal (Judge O'Hagan). The FtTJ did not hear evidence from the appellant but did do so from his mother and sister. He also had the documentary evidence set out in the appellant's bundle which included witness statements from his family members, objective material relating to religion in Saudi Arabia and letters of support from two members of the church, evidence relating to his studies and photographs and in the respondent's bundle a large number of medical reports from 2008 onwards.
15. In a decision promulgated on 17 April 2020 he dismissed his appeal. In relation to the protection claim the judge set out his findings at [36 - 52]. It was common ground between the parties that Christian converts in Saudi Arabia would be at risk of serious harm. The judge agreed with that view as set out in the objective country materials (at [40]). The judge also recorded an additional submission made at [41] that as a result of his mental health problems, the appellant could not realistically be expected to self-censor and would place himself at risk by divulging his Christian belief without regard to the danger of doing so in the context of his country of origin.
16. The FtTJ noted that he had not heard from the appellant (at [42]) and having considered the letters from the members of the church, the documents demonstrated that the appellant had shown some interest in Christianity when "putting the matter at its highest". However, the documentary evidence did not demonstrate a sustained interest and "still less a genuine conversion". The judge also considered the evidence of the appellant's mother and sister that gave reasons as to why he could not place weight on their evidence. Having considered the evidence he concluded that the account of his question conversion was a "fabrication". At [51] he considered the possibility that the appellant might attract adverse interest but that there was little in the way of evidence that the appellant had a propensity to do so. The judge found that as there was a lack of evidence to support the claim that his experience and treatment in the past gave such a reason and that even if he were to say such things, it was unlikely that they would be taken seriously in the context of a significant brain injury and resultant mental illness.
17. Permission to appeal was sought and was refused by a FtTJ but on renewal permission was granted by UTJ Gill on 4 August 2020 who stated as follows:

“It is arguable that the judge of the First-tier Tribunal (Judge O’Hagan) may have erred in law as follows;

- (i) grounds one, paragraphs 8 and nine of the renewed grounds: by assuming that the appellant did not speak English and that there was a language barrier between the appellant and rev our and also assuming that the appellant has been affected by is mental health condition to the same degree at all times;
- (ii) ground two, paragraph 12 of the renewed grounds: by misapprehending the evidence in stating that the first evidence of any Christian activity by the appellant was in September 2016: and
- (iii) ground three, paragraph 16 of the renewed grounds: in reaching is finding at paragraph 51 that the appellant would not express himself to be a Christian, the judge appears have overlooked relevant evidence (i.e. to the effect that the appellant did so when under a hospital order in 2015).”

The hearing before the Upper Tribunal:

18. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.
19. Mr Sobowale, Counsel on behalf of the appellant relied upon the written grounds of appeal. There were also further written submissions dated 23 September 2020 (in answer to the submissions set out in the Rule 24 response).
20. There were also written submissions filed on behalf of the respondent in a Rule 24 response dated 15 September 2020.
21. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions. I intend to consider their respective submissions when addressing the grounds of challenge advanced on behalf of the appellant.

Decision on error of law:

22. There are three grounds advanced on behalf of the appellant and they are set out in the renewed grounds. In my view, it is necessary to consider ground 2 before making an assessment of the other grounds.
23. Dealing with ground 2, it is submitted on behalf of the appellant that the FtTJ failed to give adequate reasons for finding that the appellant’s conversion was a fabrication. Having heard the

submissions of Mr Sobowale, in my view this is not solely a “reasons” challenge but that the FtTJ when reaching his assessment of the evidence made errors of fact which undermined his factual findings and hence his conclusions.

24. The FtTJ heard oral evidence from the appellant’s mother and sister. Their evidence concerned a number of matters but included evidence which also concerned his claimed conversion to Christianity (see paragraph 25 of his sister’s witness statement). His mother’s witness statement contains similar evidence although I note that there are two identical paragraphs in each of the statements dealing with the issue Christianity at paragraphs 34 and 25, respectively.
25. The FtTJ recorded at [48] that on the face of the evidence, it was consistent with an account of a genuine conversion. However, the FtTJ went on to reject their evidence. He gave a number of reasons. Firstly, he did not consider that they were “independent witnesses” and “there is a very strong interest in trying to establish the appellant’s claim to be a Christian convert in the context that arises here of his facing deportation.”
26. The second reason he gave is found at [48];

“it is noticeable that the first evidence of any Christian activity is in September 2016 at which time the appellant’s leave was shortly due to expire. It was on 10 November 2016, just under three weeks before his leave expired on 30 November 2016 that the asylum claim was made.”
27. Mr Diwnycz on behalf of the respondent accepted that that was factually incorrect. There was evidence contained in the medical report at AB400 which recorded the appellant and his presentation on 22 October 2015 and it was noted by the author of report that he was wearing a cross and that he had stated to the doctor that he had converted to Christianity.
28. Whilst Mr Sobowale has referred me to other evidence where the appellant had given the date of his interest or conversion to Christianity as being September 2015, both in his screening interview and his substantive interview which makes reference to changing his religion in 2015 (reference 43 - questions 57) Andy in his interview at page 255RB) both of those documents were generated after September 2016 when he had claimed asylum and therefore by themselves do not undermine the FtTJ’s findings.
29. However, I am satisfied that there was evidence which was not given during the interview/screening interview in 2016 and therefore predated his claim for asylum as evidenced in the medical report which set out the earlier date of October 2015.

30. I observed that when the FtTJ was saying that the first evidence was of Christian activity, the judge might have been referring to his activity undertaken as a Christian rather than when he first stated he had become interested in Christianity. However, neither advocate has addressed the Tribunal on that issue, and therefore I take no point on it. It follows that the finding at [48] that the date of his first interest in Christianity was September 2016 was not factually correct or in the alternative it did not take account of the other evidence that I have set out above and relied upon by the appellant.
31. I now turn to the third reason the judge gave rejecting their evidence.
32. At [49] the FtTJ stated:

“it is also noticeable that (i) the appellant initially was a student when there is no evidence of his having studied, and his brain injury and resultant problems meant that it was unlikely that he could study, and (ii) that his family seem to have been involved in his church attendance. Looking at the position in the round, it is clear that the appellant’s family sought to bring him here to care for him, and to access treatment. The evidence does not lead me to suppose that there was ever a genuine intention for him to study. There is some reason to, at the least, consider the possibility that the claimed Christian conversion was an attempt by his family to secure some basis for him to remain. The timing of the events in relation to when his leave to remain was due to expire reinforced that view...”
33. Again, Mr Diwnycz on behalf of the respondent accepted that this is factually incorrect. He indicated that the author of the Rule 24 response had not had access to the full file of papers as indicated at paragraph 4. There was evidence in the bundle concerning the appellant’s past studies. As I indicated to Mr Sobowale during the hearing the evidence of his studies was not clear and no one had sought to consider the chronologies of his studies in the context of the periods of time that he was unable to study due to his medical condition.
34. The appellant’s evidence was that he had entered the United Kingdom and completed an English course and received a certificate and then he proceeded to a degree course but it was put on hold due to his ill-health (see paragraph 8 of witness statement. Similar evidence was given by his sister at paragraph 5 and 16 of her witness statement.
35. Whilst the chronology of his studies in the context of his mental health relapses is unclear, nonetheless I am satisfied that there was some evidence that he had studied in the UK and I am further satisfied that there is a certificate of having completed in English course at elementary level in January 2009 (at 109RB). There was also referenced to having attended a college in February 2009 (RB

107). The evidence relating to his university studies is not very clear, but I am satisfied that there was a reference to the appellant having passed year one modules (RB 101) for the academic year 2013 – 2014. The documents refer to the University course starting in or about November 2012 and completing in July 2017. The evidence is unclear as to what had happened in the intervening years and whilst Mr Sobowale took oral instructions from the appellant's sister, it does not appear that such evidence was before the FtTJ or any clarification of what had happened during that time.

36. Having considered the submissions of Mr Sobowale, I am satisfied that the FTT J's finding that the evidence did not lead him to suppose that there was ever a genuine intention of him studying in the UK failed to take account of the evidence in the appellant's bundle which did refer to his studies. Whilst the judge also found that his family relatives must have appreciated that the appellant might well have struggled to gain further leave given the nature and extent of his offending (see paragraph 49, in the light of his criminal convictions that is a point that is not made without merit but on balance, I am satisfied that there was evidence which the judge had failed to take into account which had the effect of rendering that finding to be a flawed one. Therefore, it must follow that there was evidence which was relevant to the issue of his Christian and the credibility of the witnesses' evidence which was not properly analysed by the FtTJ.
37. In a dealing with ground 1, it is submitted on behalf of the appellant that the judge failed to give adequate reasons for rejecting the written evidence which is advanced in support of his claim to have genuinely converted to Christianity.
38. There were two letters in the bundle which the judge set out at paragraphs [44 – 45]. The first letter was dated 2 June 2017 from the Rev R which made reference to the appellant's attendance from about September 2016 until January 2017. The second letter considered by the FtTJ is dated 10 January 2018 from the Rev W. That letter made reference to the appellant approaching him in early summer 2017 with a letter from the church in X informing the reverend that he became a Christian and wanted instruction in the Christian faith with a view to being baptised. The letter went on to state that he had attended services over several weeks joining in the worship and listening to the sermons. As part of the process of learning about Christianity, he has received communion. His family had participated in church social events. The author of the letter said that he had organised him to take the "Christianity explored" course which he has started but has yet to complete.
39. The FtTJ's assessment of that evidence is set out at [44] where he stated:

“it is unclear from the letter how well the Rev R knew the appellant, and on what she based her view of his sincerity and commitment. At its highest, she knew him for a period of about four months. It seems likely that there would have been barriers to communication between them in terms of language, and also the appellant’s mental health”.

40. At [45] the FtTJ addressed the second letter stating, “the observation set out above about the letter from the Rev R apply with equal force to this letter.”
41. Mr Sobowale submits that the FtTJ’s approach generally was flawed when he reached the conclusion that the appellant would not have been able to express himself. He submits that the letters show interaction between the appellant and the authors of the letters. In relation to Rev R’s evidence it is submitted that she took the trouble to refer the appellant to someone else and evidenced that she accepted that he was genuine and sincere in his beliefs.
42. The second point Mr Sobowale makes is that the FtTJ was wrong at [46] where he stated that the appellant was only physically present at church but that this was wrong because the evidence demonstrated that he had received holy Communion and had been supported by his family in attending church events. Thus, the second letter, he submits, referred to a course of study in Christianity which had been arranged.
43. His submission was that the judge had taken a prejudicial view of the documentary evidence and that as he decided that the appellant had become interested in Christianity in 2016, a date which was wrong, that he could not communicate with those who wrote the letters due to his mental health and that the FtTJ’s overall assessment of the evidence was demonstrably flawed.
44. The submission made on behalf of the respondent in the Rule 24 response set out that it was pertinent to note that the judge had not heard oral evidence from the appellant and could only attach limited weight to his evidence at [42], nor were there any Dorodian witnesses present (at [43]) and the submissions made on behalf of the respondent set out at paragraph 30 (where he reported going to church in prison and in hospital but there was no evidence of this) could have been resolved if witnesses had been present to give oral evidence.
45. I have therefore carefully considered the submissions in the light of the evidence before the FtTJ and in the light of the relevant jurisprudence.
46. In the decision of the Extra Division of the Inner House of the Court of Session in *TF (Iran) v Secretary of State for the Home Department* [\[2018\] CSIH 58](#), [2019 SC 81](#) the appeal concerned an issue about the

genuineness of a claimed conversion. It was noted that active participation in a Christian church was not conclusive evidence of the genuineness of the claimed conversion but “it was likely to be a very powerful consideration, to be assessed alongside any other evidence pointing to the sincerity or otherwise of a claimed conversion to Christianity.” The remainder of the opinion was concerned with the type of evidence that would be admissible to support the genuineness of a conversion to Christianity. At [58] the decision made it plain that what mattered was that evidence came from individuals with:

“sufficient knowledge of the practices of the church of which they are a member; sufficient experience of observing and interacting with those seeking to become members of the church; sufficient knowledge and experience of others who have gone through similar processes of engagement in church activities with a view to becoming members of the church; and, in cases such as these, sufficient knowledge of the individuals concerned and of the manner in which they have thrown themselves into church activities.’

47. In *TF* there had been independent evidence including oral evidence from one witness support the genuineness of the appellant’s conversion. The evidence is detailed and extensive (see paragraph 9 - 16). The judge fell into error because he failed to engage with the evidence and as a result the appeal was remitted.
48. In a more recent decision of *MH (review; slip rule; church witnesses) Iran* [2020] UKUT 125 (IAC), the Upper Tribunal set out in its headnote that “written and oral evidence given by “church witnesses” is potentially significant in cases of Christian conversion (see *TF and MA*). Such evidence is not aptly characterised as expert evidence, nor is it necessarily deserving of particular weight, and the weight to be attached to such evidence is that the judicial factfinder”.
49. The Tribunal went on to state at [41] that active participation in church activities, without more, to demonstrate the truthfulness of a conversion, is not the position by reference to the decision in *TF and MA* although I recognise that they stated that their observations were “obiter”.
50. Having considered the evidence, in my judgement the FtTJ was required to consider the evidence of those with sufficient knowledge of the appellant. It was therefore open to the judge to find at [44] that on the face of the evidence the Rev R only knew the appellant for a period of four months and it was unclear from the contents of the letter how well the Rev knew the appellant or what she based her view of his sincerity and commitment upon. Similarly, at [45], the FtTJ took a similar view.
51. However, where the judge fell into error is the finding made that it would be likely that there were barriers to communication between

the authors of the letters and the appellant in terms of language and also of his mental health.

52. I have not been pointed to any particular evidence concerning the appellant's level of English and the letters are silent upon this. However, I accept the submission made by Mr Sobowale that there was some evidence which suggested that he was able to participate in Christian worship given the reference to holy Communion. I cannot accept the submission that the letter showed the level of interaction between the appellant and the authors, as the FtTJ stated, the letters were lacking in their content. However, I do accept that the FtTJ's assessment when he concluded that the appellant's mental health was a barrier to communication was a flawed finding. There is nothing to suggest that his mental health would have been such a barrier or if it were, the FtTJ did not identify such evidence.
53. At [46] the judge assessed photographic evidence. I do not consider that his assessment of the photographic evidence having limited value was necessarily a flawed finding in the way that Mr Sobowale submits. As general evidence, photographs are only a snapshot of the time they are taken. They do not give any details beyond that which can be seen. In that sense, the FtTJ's finding that they show the appellant being physically present in church was correct. Where I consider he erred in law is that there was some evidence in the letters which referred to active participation. The photos by themselves do not establish a genuine Christian conversion. However the evidence before the Tribunal should have been considered holistically alongside the evidence of the church witnesses and the evidence from the appellant's family and the other documentary evidence before reaching a concluded view (see decision in *Karanakaran v SSHD* [2000] 3All ER).
54. Drawing together those matters, I am satisfied that the FtTJ fell into error in his overall assessment for the reasons that I have given. The FtTJ made errors of fact as to the date the appellant stated he had been first involved in Christianity and rejected the evidence of his family members without taking into account other relevant evidence and therefore the factual findings and the assessment of the evidence, both oral and documentary evidence, was flawed.
55. As to ground 3, Mr Sobowale submits that the judge failed to give adequate reasons for finding that the appellant would not express himself to be a Christian when "in the grip of mental illness" (see grounds). In his oral submissions, he stated that the appellant had a general history of acting without inhibitions and was unable to resist impulses which therefore gave rise to a risk. In this regard I was referred to page 400 of the bundle. That is a reference to the appellant wearing a cross. Furthermore, the decision cited in the original skeleton argument and relied upon in these proceedings *MA (Cart JR: effect on UT processes) Pakistan* [2019] UKUT 353 relied

upon particular expert medical evidence and the capacity of the appellant to be discreet in the factual context of that particular claim. In my view, the medical evidence as to the appellant's presentation and functioning cannot be seen in a vacuum and therefore the assessment of the appellant's conversion, his conduct and behaviour is all of relevance and must be assessed holistically. Given that the FtTJ did not assess the factual background in accordance with the evidence, that assessment has not been undertaken. Given that this was a protection claim, and that anxious scrutiny was required before reaching a decision, the only outcome in the light of the errors of law identified is that the decision should be set aside with no findings of fact being preserved.

56. As to the remaking of the decision, the parties indicated that in the event that an error of law is found they would wish the opportunity to consider how the decision could be remade.
57. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law and that the decision should be set aside with no findings of fact preserved.
58. The parties are required to confirm their replies to the directions before any further order is made.

POSTSCRIPT:

59. Further to those directions, I have received correspondence from the appellant's solicitors. They state that they seek to take further statements from the appellant's mother and sister and also from the prison chaplain. There is a medical report.
60. The letter states "we request that the matter be re-made before the Upper Tribunal by way of an oral hearing."
61. I have therefore considered those submissions and I have done so in the light of the practice direction and I have considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

"[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case

to be put to and considered by the First-tier Tribunal; or
(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

62. The letter from the solicitors give no reasons as to why the appeal should be re-made by the Upper Tribunal. As it will be necessary for the witnesses (the appellant's mother and sister and the representative from the church and possibly the appellant) to give evidence and to deal with the evidential issues, further fact-finding will be necessary and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing. None of the previous findings have been preserved. The Tribunal will be seized of the task of undertaking a credibility assessments of all the witnesses and in the light of the issues and will be required to do so on the basis of the evidence as at the date of the hearing. I therefore find that the appeal falls within category (b) of the Practice Statement.
63. I therefore exercise my discretion and reach the conclusion that the appropriate course is for the appeal to be remitted to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error on a point of law and therefore the decision of the FtT shall be set aside. The appeal shall be remitted to the First-tier Tribunal.

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. 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 Upper Tribunal Judge Reeds

Dated 23 November 2020