



IAC-BH-PMP-V1

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

Appeal Number: AA/03430/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
On 24th September 2015**

**Decision & Reasons Promulgated
On 7th October 2015**

Before

**SENIOR UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

Between

**KAS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr McGowan, Quinn Martin & Langan, Solicitors, Glasgow

For the Respondent: Mr Mullen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Iran born on 12th August 1971. He appealed against the decision of the Respondent dated 12th February 2015 refusing to grant him asylum or other protection in the United Kingdom. His appeal was heard by Judge of the First-tier Tribunal Debra Clapham on 22nd April 2015 and 18th May 2015. The appeal was dismissed in a determination promulgated on 2nd July 2015.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Pooler on 24th July 2015. The grounds of application refer to paragraph 114 of the determination. In this the judge considers the Appellant giving up Islam and turning to Christianity. The judge states that this is merely the appellant embellishing his account and dismisses this aspect of his claim for this reason and because this was not raised previously. The grounds state that this is not sufficient. They state that this is an Appellant who has been attending church since shortly after arriving in the United Kingdom and who will be unable to practise his religion openly if he has to return to Iran. They state that the judge's failure to assess the evidence properly amounts to a material error of law. The permission states that the judge may have erred in law by failing to properly assess the evidence relating to the Appellant's *sur place* claim to have converted to Christianity and that it is arguable that she has failed to engage with the evidence, has failed to make findings on a matter which was clearly in issue and has failed to give adequate reasons for concluding that the account has merely been embellished.
3. There is a Rule 24 response from the Respondent which states that the Judge of the First-tier Tribunal directed herself appropriately and found there to be credibility issues at paragraph 101 of the document. The response states that the judge goes on to detail the adverse credibility findings and gives cogent reasons for these findings.

Analysis

4. It is clear from the determination that the First-tier Judge disbelieved the Appellant's core account. The challenge in the grounds is confined to the issue of the Appellant's claim based on his conversion to Christianity and abandonment of Islam. Christianity was not raised as a Ground of Appeal and is first mentioned in the Appellant's statement dated 15 April 2015, in which he states that he attended the [-] Church in Istanbul and in Greece, the [-] Church in Glasgow for a few weeks and then started to go to the [-] Church. At the date of the hearing he stated that he had been attending the Alpha course but had no date for a baptism. He gave no evidence at the hearing about how he would behave on return to Iran as a result of his conversion to Christianity nor does it appear that he was questioned about this.
5. In the First-tier Judge's determination she noted that at his screening interview in November 2014 the Appellant stated that he was a Muslim.
6. Mr McGowan for the Appellant explained why the hearing went on for two days. On the first day there were a number of passages which required correction in the Appellant's evidence so the hearing was adjourned part-heard and on the second day a letter was produced from the [-] Church in Glasgow.

7. Mr McGowan submitted that he and the Presenting Officer had discussed the decision and agreed that the judge has failed to properly consider the Christianity aspect of the claim. The word “embellished” used by the judge was discussed and it was decided that the Appellant’s claim on the basis of his Christianity is not merely an embellishment of his asylum claim.
8. Mr McGowan submitted that if we find that there is a material error of law in the decision it should be set aside and the appeal be remitted to the First-tier Tribunal for a new hearing before a different First-tier Judge.
9. There was no question of any remaking of the decision going ahead on the day as no interpreter had been booked. Mr McGowan submitted that as the evidence relating to the Appellant’s Christianity had not been assessed and taking account of the letter from the [-] Church, it would be fairer to remit the appeal to the First-tier. The credibility of the Appellant’s conversion has to be tested. There was a discussion about the various churches the Appellant has attended and the Alpha course which is a precursor to the Appellant being baptised as a Christian. He submitted that the Appellant was not given the chance to give evidence about his conversion and the judge failed to make clear findings about the Appellant’s shift of faith.
10. Mr Mullen accepted that the Appellant’s intentions had not been properly considered so it is not clear whether he will be at risk on return.
11. We find there to be a material error of law in the First-tier Judge’s decision. The judge did not make clear or adequate findings on key matters. The case required not only a finding on the clear evidence of conversion but also a decision about the Appellant’s intentions on return. In this context the judge was required to decide whether the Appellant’s conduct would put him at risk on return to Iran. The First-tier Tribunal Judge’s decision has to be set aside but confined to the Appellant’s claim to have converted to Christianity and the consequences for him if returned. There is no challenge to the findings of the First-tier Tribunal regarding the other aspects of his claim and these therefore stand.
12. We have considered the Practice Statements of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal dated 21st September 2012 by Sir Jeremy Sullivan, Senior President of Tribunals when deciding whether the appeal should be remitted to the First-tier Tribunal.
13. At heading number 7 - “Disposal of Appeals in Upper Tribunal” - it is stated that where the Upper Tribunal finds that the First-tier Judge when making her decision, involved the making of an error on a point of law, the Upper Tribunal may set aside the decision and if it does so must either remit the case to the First-tier Tribunal under Section 12(2)(b)(i) or proceed (in accordance with the relevant Practice Directions) to re-make the decision under Section 12(2)(b)(ii). The Practice Statements go on to

state that the case should be remitted to the First-tier Tribunal only if 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.

14. We find that the effect of the material error of law in this claim is that there will need to be comprehensive judicial fact finding on the new limb to the claim and so we are remitting this appeal back to the First-tier Tribunal for rehearing on the aspect of the appellant's shift in faith from Islam to Christianity.

Notice of Decision

15. There is a material error of law in the First-tier Judge's decision.
16. We remit this case to be reheard in the First-tier Tribunal but not before Judge of the First-tier Tribunal Debra Clapham, on one aspect of the Appellant's claim, being his conversion to Christianity. The remainder of the First-tier Judge's decision shall stand.
17. Anonymity is directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray