



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

Appeal Number: AA/04188/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 13 November 2015**

**Decision and Reasons
Promulgated
On 20 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**AMIRFARHAD DADRASI
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Smeaton (for Hasan Solicitors)

For the Respondent: Mr S Kandola (Home Office Presenting Officer)

DECISION AND REASONS
ERROR OF LAW HEARING

1. This is the appeal of Amirfarhad Dadrasi, a citizen of Iran born 23 October 1989, against the decision to make removal directions against him under section 10 of the Immigration and Asylum Act 1999 following the refusal of his asylum claim. He now appeals to the Upper Tribunal, with permission, against the decision of the First-tier Tribunal.

2. His asylum claim was based on the following account. He was arrested for failure to comply with his military service obligations in 2010 or 2011 and served forty days out of the seventy day sentence that ensued. In May 2012 he received an email that contained images including one of the Prophet Mohammed and various Mullahs; he saved these and forwarded the email to his friend Ali. A few days later he was called by his sister who said that plain-clothed agents had visited their home, with Ali, and his younger brother Farzad had been taken away for questioning. The Appellant fled the country fearing the reaction of the state authorities, travelling to the United Kingdom via Greece where he was arrested and detained for illegal entry; he claimed asylum there. He was introduced to Christianity by friends and was baptised at the Athens Baptist Church on 23 December 2012. He went into hiding in Greece once his immigration document expired and subsequently travelled to the United Kingdom.
3. The First-tier Tribunal directed itself that the central issue before it was the genuineness of the Appellant's conversion to Christianity. It found that this was not credible, because
 - (a) There was an unexplained discrepancy between his interview record and his witness statement addressing the fact that his baptism certificate from Greece gave the date as 14 December 2012 whereas a baptism card stated 23 December 2012: this was a surprising matter (particularly given that he had had over three months to clarify the matter with the church directly) albeit not one that could itself destroy his credibility;
 - (b) The photos said to represent his baptism by his church's pastor were taken against a background looking more like a kitchen and a large industrial vat than a church and a baptism pool;
 - (c) It was unlikely that he would have been baptised so speedily having been in prison originally and then converting only a month after having been given a bible;
 - (d) He had not told his family of his conversion, notwithstanding his stated wish to evangelise;
 - (e) Despite claiming to be an evangelical, he has not sought converts, which he attributed partly to the language barrier and partly considering himself a "beginner", which the judge thought inconsistent with his claimed study of the Farsi bible since December 2012;
 - (f) He had not adequately explained why it was he had not extended his temporary leave to remain in Greece;
 - (g) Pastor John Brown's evidence did no more than show that the Appellant had physically attended church, and he was not in attendance to give oral evidence (his absence not having been thought to justify an adjournment absent more detailed medical evidence of his claimed indisposition following a hernia operation three days before the hearing having been provided).

4. In the light of these findings, “His credibility therefore falls and the other uncorroborated parts of his account concerning being wanted for sending offensive images by computer and his illegal exit are also not accepted”.
5. Grounds of appeal were lodged arguing that Pastor Brown’s oral evidence would have been crucial to the success of the appeal and that the written evidence that he had supplied had in fact referenced the Appellant having evangelised and introduced people to the church; furthermore the Respondent’s acceptance of the fact that George Dimakos was the pastor of the Greek church had been overlooked, as had evidence from social media accounts showing pictures of the Pastor and his wife Luisa which corroborated the claim that the former was indeed present with the Appellant at the moment of his claimed baptism. It had been wrong to hold any failure to regularise his status in Greece against him given the well known failings of the asylum system prevailing there, and no subsequent findings had been made on his primary reason for leaving Iran, ie the reaction of the state authorities to the emails with which he claimed to have been associated.
6. Notwithstanding a refusal of permission to appeal by Judge Ransley on 27 July 2015, a renewed application was granted by Judge Kopieczek on 8 September 2015, because there was ambiguity as to the reasons for refusing the adjournment given it was unclear whether the First-tier Tribunal accepted that there was a genuine reason for the witness’s non-attendance, and because arguably no adequate findings had been made on the dangers he might face based on his claim that he was wanted for sending offensive email images: the permission grant was not limited to these grounds.
7. Although formally resisting the appeal, Mr Kandola did not actively seek to persuade me that the decision was a lawful one, and in those circumstances Ms Smeaton was able to rely on her grounds of appeal.

Findings and Reasons

8. The decision of the Upper Tribunal in *Nwaigwe (adjournment; fairness)* [2014] UKUT 00418 (IAC) emphasises the importance of the test of fairness and the question of whether a party will be deprived of a fair hearing if an adjournment is refused.
9. The availability of a material witness on a matter central to the credibility of an asylum claim is of vital importance to the just disposal of an appeal. As noted in Presidential Guidance Note No 1 of 2014, “Factors weighing in favour of adjourning an appeal, even at a late stage in proceedings, include ... [s]udden illness or other compelling reason preventing a party or a witness attending a hearing.”
10. Here, the appeal largely turns on whether the Appellant is a credible witness of having become an evangelical Christian. The First-tier Tribunal did not make a clear finding as to the availability of this witness, but rather concentrated on the sufficiency of the medical

evidence that he had put forward. However, given the stated wish to support the Appellant's appeal by a Pastor, it was necessary to determine whether he was truly indisposed at present, and whether he would in future be available as a witness, before a lawful decision on an adjournment was taken. That was not done here.

11. As the findings made on the appeal were determined absent the support of a potentially corroborative witness in the light of whose evidence they might have been differently assessed, it is not possible to uphold the decision based on the extant reasoning. The findings on the original reasons for departing Iran stand and fall with those on the Appellant's claim to have converted, and so will also require redetermination. In those circumstances, little more need to be said about them. However, it is difficult to avoid expressing surprise that the First-tier Tribunal considered that the Appellant's credibility was impugned by his failure to extend his temporary residence in Greece. The Strasbourg Court in *M.S.S. v Belgium and Greece* 30696/09 [2011] ECHR 108 recognised there to be very serious failings in asylum reception conditions there, stating at [301] that

“The Court notes, firstly, the shortcomings in access to the asylum procedure and in the examination of applications for asylum ... insufficient information for asylum seekers about the procedures to be followed, difficult access to the Attica police headquarters, no reliable system of communication between the authorities and the asylum seekers, shortage of interpreters and lack of training of the staff responsible for conducting the individual interviews, lack of legal aid effectively depriving the asylum seekers of legal counsel, and excessively lengthy delays in receiving a decision.”

12. Given that level of indictment of the conditions in Greece by a supranational court, it is difficult to see that an asylum seeker could be legitimately criticised for failing to regularise their status.
13. As this conclusion means that the appeal will have to be fully redetermined without any factual findings being preserved, it seems to me that it is appropriate for remittal for hearing afresh before the First-tier Tribunal.

Decision:

The making of the decision of the First-tier Tribunal was flawed by material error of law.

The appeal is remitted for hearing afresh.

A handwritten signature in black ink, appearing to read 'M.A. Symes'. The signature is written in a cursive style with a long, sweeping underline that extends to the left and then curves back under the name.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 17 November 2015