



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

Appeal Number: AA/04905/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd November 2015**

**Decision & Reasons Promulgated
On 9th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**S S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Gayle, Counsel instructed by Elder Rahimi Solicitors
For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Iran born on 3rd December 1981 and he appealed against the decision of the Secretary of State dated 9th March 2015 refusing to grant him asylum, humanitarian protection and protection under the European Convention.
2. The appellant's claim was that he was educated in Iran to diploma level and stopped practising Islam at the age of 20 years old. He was introduced to Baha'i by a childhood friend and over the following year (in

2013) attended 8 – 10 Baha'i house meetings. He converted to Baha'i. He was arrested at a meeting and detained. His father's paternal uncle arranged for his release. The condition of his release was that he be available when required. The appellant was afraid to return to Iran lest he be persecuted by the authorities.

3. The appellant's case was heard by First-tier Tribunal Judge Juss who dismissed the appeal. An application for permission to appeal was made by the appellant asserting that the judge had failed to provide sustainable reasons for his adverse credibility findings. The judge materially erred by misrepresenting the evidence. The appellant had explained in his evidence that he was born Shia but converted to Baha'i. This was not dealt with. The appellant stated that in his screening interview that he had a religious problem and it was clear that there was an unrecorded section to the interview. The judge erroneously recorded that the appellant stated that he simply attended meetings which was not correct. The appellant answered many of the questions relating to Baha'i correctly and the judge failed to acknowledge this. The judge took no account of the appellant's appeal statement or witness statement both of which were presented to the First tier Tribunal. This was evident from the failure of the judge to acknowledge the explanation of the appellant regarding the locations of the meeting houses and the judge had failed to address the appellant's statement [W/s 10]. The judge based his rejection of the appellant's arrest, detention and ill-treatment on a materially flawed analysis of the core of the appellant's account.
4. First tier Tribunal Judge White granted permission to appeal. He found that it was arguable that the judge had failed to have sufficient regard to the appellant's witness statement concerning his knowledge of the Baha'i faith and the locations of the meetings.
5. At the hearing before me Mr Gayle expanded on the written application for permission to appeal. He pointed out that the judge appeared to rely substantially on the reasons for refusal letter but there were mistakes in the reasons for refusal letter, or at least mistakes in the interpretation of the evidence by the judge. The judge had criticised the appellant for not knowing answers but the answers he did know were considered to be 'learned' for the purpose of the appeal. Nowhere in the decision was there an acknowledgement of the explanations made by the appellant for example as to the lack of knowledge of the locations of the meetings. The judge did not refer to the appellant's witness statement or his appeal statement. The criticism of the appellant's response on the 'marriage question' did not accurately reflect the background evidence. The matter of the 'core beliefs' was also open to interpretation which had not been addressed. There were in fact no set prayers and no strict scriptures.
6. Ms Sreeraman accepted that the judge did not refer to the witness statement but the judge identified that the appellant had been provided with a book after his arrival in the UK and thus the information the appellant noted could have been learned after his arrival in the UK.

7. In conclusion there was clearly an issue with respect to the appellant's stated religion (Shia) as the appellant maintained in his witness statement [2] ,which was before the First-tier Tribunal, that when asked about his religion he explained at the outset that during the Screening Interview, initially he was Shia but then converted to Baha'i. This is recorded in the appellant's witness statement. Indeed, there would appear to have been some unrecorded information given because at Question 4.1 the appellant stated 'As I said I had a religious problem and for about 1 year I was with Baha'i in Iran'. The judge makes no reference to the appellant's explanation and yet proceeds to make this finding the starting point for his credibility assessment. The appellant's response on fasting was *not* in fact conclusive that the Baha'i do not fast although the judge stated that the appellant stated that they did not fast.
8. When addressing at [17] of the decision the appellant's failure to answer questions on the Baha'i faith, the judge does not address the appellant's explanation for that failure or state why it was rejected.
9. The judge stated that

'some things the appellant got categorically wrong. For example when he was asked whether the Bahais believe in marriage (AIR 286) he replies that the Bahais must marry whereas the objective evidence is that for Bahais marriage is not the central purpose of life and those who do not marry are not second class citizen' [17].

In fact the appellant responded at AIR 286 that Bahais must marry *officially* which is not the same as stating that Baha'i must marry.
10. The judge noted the appellant's failure to identify the location of his meetings - which also formed the basis of the rejection of his claimed arrest - but made no reference to the appellant's explanation within his appeal statement at [15] and why he rejected that.
11. The appellant did manage to answer a number of questions correctly but this was merely dismissed as having been subsequently learned. I note in respect of the core beliefs the refusal letter states that 'it is not considered that you have been wholly inconsistent with the objective evidence'.
12. As there appeared to be some reliance by the judge on evidence which was misinterpreted from the answers in his asylum interview, there was no reference to the witness statement or his appeal statement which attempted to explain the deficiencies in his answers I find that there are errors of law which may affect the outcome of the decision in a material way and substantially undermines the assessment in relation to the appellant's credibility. This is fundamental to the findings.
13. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier

Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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 their 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 3rd November 2015

Deputy Upper Tribunal Judge Rimington