



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/02074/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 1st December 2015

Decision & Reasons Promulgated
On 18th January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

RM
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Smith, Solicitor of Dicksons Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. On 20th August 2015 Judge of the First-tier Tribunal Reid gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Garbett in which she dismissed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellant a male citizen of Iran.

2. Judge Reid noted that the grounds of application contended, amongst other things, that the judge had relied upon matters which were not put to the appellant at the hearing or raised in the refusal letter before making adverse findings of credibility; that findings as to implausibility in relation to a grant of bail were not reasonable; and the judge did not give adequate reasons for concluding that the appellant was not a genuine convert to Christianity.
3. Judge Reid thought it arguable that the judge had not given the appellant an opportunity to address possible evidential inconsistencies and that inadequate reasons have been given for the conclusions about the appellant's claimed conversion to Christianity.
4. At the hearing before me Ms Smith relied upon the grounds which set out, in greater detail, the two main issues raised. I summarise them below.
5. The first concerns the re-translations of "bail" documents which were submitted by the appellant at the hearing allegedly to correct inaccuracies in the original translations of these documents. One translation indicated that bail had been requested for 30 days when the re-translation indicated seven days but subject to an illegible part of the document. In another the appellant is described differently in each translation. Further, it is contended that the appellant was not given the opportunity to explain what "verdict" meant in a document dated 20th February 2013 and, additionally, whether the authorities would allow the appellant twenty days to report to them when the grant of bail appeared to have expired. The judge's conclusions in this respect are to be found in paragraphs 44 to 47, inclusive. It is also contended that the judge was wrong to find that it would be implausible for the appellant to have been granted bail in the circumstances revealed by the documents when country evidence submitted showed to the contrary.
6. As to the judge's findings in relation to Christianity, it is argued that the judge's conclusion that the appellant had not genuinely converted to that faith (paragraph 62 of the decision) is inadequately reasoned.
7. Ms Smith further explained that the judge had allowed the appellant to produce (after the hearing) a certificate from the translator involved in the re-translations in order that the accuracy of the bail documents could be verified as the appellant had claimed that each original translation contained errors. She argued that the judge should, in those circumstances, have taken into account the documents as re-translated, particularly the stated illegibility in the bail document originally thought to request bail for 30 days. She also submitted that it would be wrong to conclude that, when making her submissions at the First-tier hearing, she had not relied upon the re-translations when clearly they had been submitted to clarify errors in the earlier versions.
8. Additionally, Ms Smith emphasised that the judge had been wrong to assume that the appellant had been the subject of a "verdict" when the re-translations made it clear that the letter of warning of 20th February 2013 (referred to by the judge in paragraphs 44 to 45) did not contain that word. In relation to this issue and the second warning letter of 13th April 2013 the judge had not been given the opportunity to explain the inconsistency to which the judge referred in paragraphs 46 and 47.

9. As to the findings about Christianity, Ms Smith also submitted that these had depended upon the flawed conclusions about credibility arising from the court documents which had been re-translated.
10. Mr McVeety reminded me of the response submitted on 27th August 2015 in which it was submitted that the decision did not show material errors on points of law. However, he agreed that the judge had placed great weight on the matters to which the re-translations referred which did not appear to have been handled correctly and the Christianity findings were evidently influenced by other credibility conclusions.
11. After hearing submissions and after I had considered the matter for a few moments, I indicated that I was satisfied that the decision did show material errors on points of law such that it should be re-made and now give my reasons for those conclusions.
12. The decision by the judge is well composed and comprehensive. However, in the two main areas of contention. the decision suggests that the judge did not fully consider the evidence submitted by the appellant to correct perceived translation errors and, despite adequate reasoning in other parts of the decision, did not give adequate reasons for the conclusion that the appellant's claim to be a Christian and to evangelise his faith was not credible.
13. Paragraph 9 of the decision shows that the judge was concerned with the re-translations of four court documents submitted which, the respondent's representative had noted, did not contain a certificate by the translator. The judge therefore allowed certified copies to be produced by the appellant's representatives following the hearing and invited the respondent to make comment on those documents after their receipt. Whilst the documents were received before the judge made her decision, the respondent made no further comment on them. In these circumstances it was incumbent upon the judge to give reasons for apparently not accepting the latest certified translations of the relevant documents. In paragraph 43 of the decision, for example, the judge considers, as an issue of credibility, the difference in dates between the translated and re-translated versions. The judge therefore appeared to be questioning the certified translations when the respondent had chosen to make no further comment on those versions and there was no evidence before the judge to suggest that the latest translations might also be wrong. Further, in paragraphs 44 and 45, the judge refers to the letter of warning of 20th February 2013 on the basis that it makes reference to a "issued verdict". But the re-translated version makes no such reference. In any event, the words "issued verdict" might also refer to a verdict issued in the future after arrest and expiry of a twenty day reporting period rather than before those events as the judge concludes.
14. I also accept the appellant's contention that matters relating to perceived inconsistencies in the translations of the court document should have been notified to him before the judge reached conclusions upon them. It was not sufficient to assume that the reliability of the re-translations could be examined when those documents had been prepared by an apparently independent translator who had appended his certificate and the respondent had not commented on the certified versions.
15. As to the second point, relating to the appellant's claimed conversion to Christianity, the judge sets out the evidence and the respondent's views of it in the paragraphs preceding paragraph 61 and accepts the oral evidence of Reverend Lowe. However, in paragraph 62, she gives no specific reasons for indicating that she is not satisfied

that the appellant had genuinely converted to Christianity save for reliance upon previous findings on credibility which are vitiated by the errors to which I have already referred.

16. I have considered whether the errors identified might not be material but I am unable to reach that conclusion. That is because it is evident that the court documentation featured highly in the judge's findings on credibility both in relation to the claimed persecution and conversion to Christianity. In relation to the latter specific reasons were also required to reject the evidence of Reverend Lowe when this was submitted in line with the guidance in *Shirazi* [2003] EWCA Civ 1562 to confirm that the appellant had genuinely converted to Christianity.
17. Representatives agreed that the matter should be heard afresh by the First-tier Tribunal. Having regard to the content of paragraph 7.2 of the Practice Statement for the Upper Tribunal issued by the Senior President on 25th September 2012, in particular the need for the hearing of evidence, I was satisfied that the matter should be so remitted.

Notice of Decision

The decision of the First-tier Tribunal shows an error on a point of law. The decision is set aside and the matter remitted to the First-tier Tribunal for hearing afresh.

Anonymity

Bearing in mind the circumstances of this appeal and that the First-tier Tribunal made an anonymity direction I consider that such a direction should be made in the Upper Tribunal as follows:

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DIRECTIONS

18. The decision of the First-tier Tribunal is set aside.
19. The matter is to be re-heard by the First-tier Tribunal sitting at the Stoke Hearing Centre.
20. The hearing to take place on a date specified by the Resident Judge.
21. The hearing should not be before Judge Garbett.

22. A Farsi interpreter should be provided for the hearing.

Signed

Date

Deputy Upper Tribunal Judge Garratt