



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

Appeal Number: AA/06931/2015

THE IMMIGRATION ACTS

Heard at Field House

On 3rd March 2016

**Decision & Reasons
Promulgated
On 1st July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**BS
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Seddon of Counsel instructed by Sookias & Sookias
For the Respondent: Ms M Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Telford promulgated on 28 October 2015 brought with the permission of Upper Tribunal Judge Jordan granted on 12 January 2016, permission to appeal having initially been refused by First-tier Tribunal Judge Ford on 7 December 2015.
2. In granting permission to appeal Judge Jordan considered that it was "*arguable that the First-tier Tribunal Judge failed to engage with the evidence about the Appellant's claim to have converted to Christianity or to provide adequate reasons for his conclusion*".

3. The Appellant is a young man from Pakistan. His personal details are a matter of record on file and I do not reproduce them here in the body of this decision in keeping with the anonymity order that has been previously made and is to be continued in these proceedings. Suffice it to say at the present time he is currently 25 years old.
4. In terms of his immigration history, the Appellant entered the United Kingdom on 1 April 2009 as a Tier 4 (General) Student with leave valid until 31 August 2010. In due course and after an initial refusal he was granted further leave from 16 July 2013 until 16 September 2013, and thereafter a further period of leave in the same capacity as a student on 13 September 2013 until 30 October 2014. On 20 October 2014 he claimed asylum. In due course the Appellant was interviewed by the Secretary of State both by way of an initial screening interview on 20 October 2014 and then at a substantive asylum interview on 26 March 2015. The Appellant's application for asylum was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 7 April 2015 and in consequence a decision was taken to refuse to vary his leave to remain and also to remove him from the UK.
5. The Appellant appealed to the First-tier Tribunal on asylum grounds.
6. The Appellant's asylum claim was based on his claimed conversion to Christianity. He said in effect that this would put him at risk in Pakistan as an apostate, that he would face harm from his family members and also from wider society, and there would be no adequate state protection. He also in his initial claim indicated a fear of the possibility of prosecution as an apostate and/or a blasphemer. He claimed to be a member of the congregation at Christ Church in North Finchley and to have been baptised there on 12 October 2014.
7. The Respondent, in the RFRL accepted that the Appellant had been a practising Muslim whilst in Pakistan, but, for reasons set out at paragraphs 18-27 of the RFRL, did not accept that he had converted to Christianity. I do not propose to rehearse the entirety of those paragraphs but because of their particular relevance to the matters to which I shall refer in due course it is appropriate to quote passages from paragraph 23 of the RFRL, in particular the following two passages:

"You correctly identified that Christmas and Easter are important celebration days and that Christmas is celebrated on 25 December every year to mark when Jesus was born. However you did not know whether Easter was celebrated on the same day every year, what Good Friday is, or what Lent is. You were able to identify that East

celebrated Jesus' resurrection and he rose three days after being crucified by Pontius Pilate.";

and:

"In your asylum interview you were able to provide a vague description about what the book of Genesis contained stating it is about 'Adam and Eve' however you did not mention that it contained about how the earth was created by God or any of the other events. You did correctly state that Adam and Eve were believed to be the first people on earth, that they were created in 'God's image' and that they lived in the Garden of Eden. You did not know from which part of Adam's body God used to create Eve."

It may be seen from those passages that the Appellant's knowledge of Christianity could not be said to be non-existent but in some respects was reasonably detailed, albeit there were some gaps in his knowledge. It is essentially on the basis of such gaps in his knowledge that the Secretary of State determined that the Appellant was not a person who could be considered a convert to Christianity.

8. At his appeal the Appellant was supported by three witnesses from Christ Church. Those witnesses were Ms Pauline Roberts, the Parish Administrator, the Reverend David Walker who was the Vicar at Christ Church, and Mr James Weaver, an Assistant Minister at the church.
9. The First-tier Tribunal Judge accepted that the Appellant had attended Christ Church and had undergone a ceremony of baptism. However, the First-tier Tribunal Judge did not accept that the Appellant was genuine in his conversion.
10. In effect the Judge gave three reasons in support of his conclusion. Essentially these were:
 - (i) that the timing of the Appellant's claim for asylum cast doubt on his credibility;
 - (ii) that there was an inconsistency and implausibility in the Appellant's account in respect of informing his mother of the fact of his baptism; and
 - (iii) that there were gaps in the Appellant's knowledge of his faith in circumstances where he could provide no real excuse for such gaps.

It seems to me that if any of those three strands might be said to have been arrived at by error amounting to an error of law, the overall decision

is in jeopardy because not one of these three strands is readily amenable to being untangled from the others, and in my judgment no single factor as identified by the Judge could be marginalised as being immaterial to his overall consideration.

11. In my judgment there are problems with each of the three strands.
12. In respect of the timing of the Appellant's claim the Judge says this at paragraph 11 of the decision:

"I cannot ignore the immigration history of the appellant in this case. He came into the UK in 2009 as a student. He stayed and then applied for further visa extensions as a student. Whilst it does not of itself determine the matter, it does speak to me about an ability of the appellant to time his claim very finely according to his expiry of student visa and time it on very important issues. I take into account Section 8 of the asylum and Immigration (Treatment of Claimants, etc.) Act 2004 in regard to his asylum claim not having been made at the earliest opportunity when, after he arrived in the UK he delayed making a claim from early to mid 2014 to 20 October 2014, 8 days after baptism and receipt of his certificate and 10 days before his final student visa was due to expire. He claimed he had reason not to return because of threats which built up over time from many close family including his uncle between April 2014, July 2014 and through the Summer. He would not have needed to wait until a formal baptism in order to claim he had in fact changed his religion and was in genuine fear for his life if he returned home. I find that his late if welcome admission that he is an illegal worker seeking to gain funds to be an admission that he always came here not as a true refugee but as an economic migrant. He had many opportunities to claim and his delay in moving to the UK for one month undermines his account because he would have been at risk in that time."

13. The first thing to observe in respect of this paragraph is that section 8 of the 2004 Act did not feature in the Secretary of State's reasons set out in the RFRL at all. Nor was there any other reference to the Appellant's credibility being damaged by reason of any delay in making his asylum claim. Nor is it the case that the Appellant was cross-examined by the Secretary of State's representative before the First-tier Tribunal in respect of any matters relevant to the issues identified by the Judge in the context of section 8. I have been provided with, as indeed had the parties, a transcript of the Judge's Record of Proceedings and Ms Willocks-Briscoe on behalf of the Secretary of State today acknowledges that there is nothing in that transcript to indicate either that the Secretary of State was raising any point in respect of delay and/or section 8 or that the Judge asked the Appellant any questions relevant to delay and/or section 8 - and indeed it

is evident from the Record of Proceedings that delay and section 8 formed no part of the closing submissions of the Respondent's representative.

14. On behalf of the Appellant, in the grounds of appeal to the Upper Tribunal and also in the submissions made by Mr Seddon today expanding upon those grounds, it is essentially said that had the matter been raised with the Appellant he would have had much to say on it. In particular he would have perhaps made reference to the fact that he was two years into a three year degree course and would have been able to continue in his capacity as a student at the end of the leave due to expire at the end of October 2014 but for the fact that in response to his conversion to Christianity his uncle, who had been sponsoring his education, had decided to withhold funding. In short the Appellant might have said to the Tribunal that his circumstances were such that he did not need to claim asylum until such time as it became impossible for him to try to continue his studies in the United Kingdom. It is also said that the Appellant might have wanted to point out that whilst it was mid 2014 that he began to explore Christianity it was not until some time much closer to the eventual date of his application that he decided to make the commitment to convert - which is what he claims puts him at risk - and therefore the delay is not as extensive as the Judge identifies.
15. On the face of it there does seem to be a failure to put to the Appellant at any stage in the proceedings important and relevant matters that turned out to inform a significant part of the Judge's overall adverse assessment of the Appellant's credibility, and I consider that in all of the circumstances that amounts to a breach of natural justice and therefore an error of law.
16. If I am wrong in this regard, there is in any event an additional aspect of challenge in that the final section of paragraph 11 bears no resemblance to the facts of the Appellant's case. It is the section that is in these terms:

"I find that his late if welcome admission that he is an illegal worker seeking to gain funds to be an admission that he always came here not as a true refugee but as an economic migrant. He had many opportunities to claim and his delay in moving to the UK for one month undermines his account because he would have been at risk in that time."
17. Ms Willocks-Briscoe accepts that this cannot possibly refer to the Appellant whose claim is based on being a refugee *sur place* and so issues of delay in leaving his country of origin do not arise. Nor do issues arise as to opportunities to claim asylum *en route* to the United Kingdom. Moreover there was no admission that the Appellant was an illegal worker or that he was an economic migrant. These references appear to have found their

way into this decision from some other case and necessarily this undermines the aspect of required anxious scrutiny with regard to the Judge's considerations at paragraph 11.

18. I also bear in mind that the context of paragraph 11 is essentially the Judge saying that the Appellant is so cynical in his timing that he is essentially manipulative enough to engage in an appearance of an interest in the faith for the simple reason of making an application prior to the expiry of his leave in order to prolong his stay in the United Kingdom. It seems to me that necessarily the Judge's evaluation at paragraph 11 is an important block in the overall building of the adverse credibility finding and, as I say, is not possible to unravel from the other aspects of the decision to an extent that the error - as I find it is - was plainly material. In my judgment this in itself would be enough to justify setting aside the decision of the First-tier Tribunal.
19. However, nonetheless, I turn to another of the three strands of the First-tier Tribunal Judge's reasoning - the level of knowledge of Christianity displayed by the Appellant as a signifier of the genuineness of his faith or otherwise.
20. The Judge at paragraph 9 - bearing in mind the criticisms of the Respondent's approach that had been made on the Appellant's behalf in the course of the grounds of appeal, the written submissions, and no doubt oral submissions - observes this:

"I do not adopt the approach of considering Christianity as only being something shown or proved on any standard applicable to this case by satisfying a series of questions which have been described as amounting to a 'tick list' of requirements."

21. Notwithstanding that apparent self-direction, it appears that at paragraph 14 the Judge does indeed evaluate the Appellant's faith by reference to an expectation of what he 'ought' to know as a genuine Christian. Paragraph 14 in its entirety is in these terms:

"He had relied on a number of different views on what was somehow essential to being Christian. He had criticised the scope and understanding and methodology of the Respondent's approach to asking him questions about Christian tenets. Some of his answers were correct. Others were not and he explained these by reason of lack of teaching of him by the Church he attended. However, I find that a lack of teaching is no real excuse for not investigating for oneself which is what he had claimed to have done initially when he first attended a church. I find it inconsistent to explore for a while

and then when one has broken through so to speak into a new world of ideas and beliefs, to stop without seeking further knowledge. It was as if he was saying that he had done enough to make a pretty good case for being a Christian and that was somehow enough and he would travel no more on that journey of mental or spiritual exploration."

22. The Secretary of State, as I have already identified, very much put at the core of the rejection of the Appellant's case, the ability of the Appellant to demonstrate knowledge of his faith. In order to address this, the Appellant made detailed evidence-based submissions before the First-tier Tribunal. Those submissions were set out in the main part at paragraph 8 of the Appellant's Skeleton Argument before the First-tier Tribunal, which contains no less than nine sub-paragraphs and covers some seven pages. It is a carefully drafted submission which cross-references both the RFRL and the supporting testimony of the Appellant's witnesses. In essence it was a careful and detailed submission to attempt to demonstrate that the Appellant's level of knowledge of Christianity at the time of his interview with the Secretary of State was entirely consistent with the amount of time to which he had been exposed to that religion, the teachings that he had received within the church, and in respect of the materials that the church had directed him to read, as it were, in his own time.
23. By way of illustration, and bearing in mind the passages to which I have already referred in the RFRL, it is instructive to consider certain aspects of the witness statements of the Reverend David Walker and the Assistant Minister, Mr James Weaver.
24. At paragraph 3 of his witness statement Reverend Walker identifies that after first meeting the Appellant he had suggested that the Appellant read the Gospels. Mr Seddon emphasises that that is an illustration that the Appellant's learning in respect of Christianity was right from the beginning being guided by the church. At paragraphs 7-11 of his witness statement Reverend Walker identifies the specific teachings to which the Appellant would have been exposed during the relatively short period that he had been involved with the church up to the date of the substantive asylum interview. Those paragraphs include at paragraph 8 an explanation in respect of the extent to which the Appellant might have been expected to be able to identify the meaning of Good Friday and the inconsistency of the calendar date upon which Easter is marked in the United Kingdom.
25. Mr Weaver similarly in his witness statement, in particular at paragraph 6, addresses the areas in which the Appellant would have received guidance and teaching and expressly includes an acknowledgment that the Appellant would not have been taught about the Old Testament but that

he “*will have better understanding of the Old Testament teaching in a few months’ time*”.

26. I pause to observe that the latter observations - about future teaching - runs contrary to the Judge’s reasoning that the Appellant had acquired a certain amount of knowledge and then stopped. It is plain from the thrust of both the witness statements - and indeed the witness statement of the church warden - that it was said that the Appellant was continuing to receive tuition and guidance from the church: to that extent it is not clear upon what evidential basis the Judge could have reached the conclusion that the Appellant had ceased to continue “*seeking further knowledge*”.
27. Be that as it may, such passages in the Appellant’s supporting witnesses’ statements were picked up in the Skeleton Argument, in particular at subparagraphs 8(3), 8(4) and 8(5), to construct detailed submissions addressing specifically those passages in the Respondent’s RFRL critical of the Appellant’s knowledge of his faith.
28. Regrettably, there is no attempt in the decision of the First-tier Tribunal to demonstrate any engagement by the Judge with the thrust of those submissions and the supporting evidence.
29. Indeed, insofar as the Judge considers the supporting evidence he in effect marginalises it at paragraph 15 on the basis that, in the Judge’s evaluation, all three witnesses have essentially been duped by the Appellant because they are “*so kind and unquestioning*”. It is as if the Judge has determined that because *he* has concluded that the Appellant is not a genuine Christian that the witnesses must be in error in what they have said. It is not so apparent - because there is no other analysis of the careful and detailed testimony of the witnesses - that the Judge has reached his conclusion ‘in the round’ and in particular only after a careful consideration of the weight to be attached to the witnesses’ evidence and the supporting submissions. Indeed in my judgment, appropriate criticism is made of the Judge’s observation that the witnesses were ‘unquestioning’ in circumstances where their evidence is exactly designed to address and engage with the issues in the RFRL and necessarily is based on their own consideration and questioning of the substance of what is said therein, which in turn inevitably involves them asking questions of themselves and answering those questions as to what they make of the Appellant’s faith in light of the Secretary of State’s evaluation.
30. The Judge otherwise essentially relies upon an expectation that the Appellant had “*no real excuse*” for not investigating his faith beyond the guidance that he was receiving from his church. In my judgment, in a

case involving the lower standard of proof and requiring proper anxious scrutiny, it is a step too far essentially to criticise the Appellant on the basis that he has not pursued, as it were, sufficient extracurricular Bible study and religious study beyond the specific instruction he was receiving through his church. No relevant yardstick or benchmark is identified by the Judge, and indeed no such measure is readily identifiable: necessarily therefore it become problematic to place determinative weight on not having reached some unspecified 'standard'.

31. In all such circumstances, in my judgment the Judge's approach to this aspect of the case is in serious error; moreover, given that it lies at the core of the reasoning of the Secretary of State, the error affects the core of the Judge's assessment on appeal.
32. In those circumstances it is not really necessary for me to address the remaining point in respect of the supposed inconsistency and implausibility of the Appellant's conduct in contacting his mother immediately after his baptism to inform her of that event. Were it necessary for me to descend to any detail in this regard I would observe that I am troubled by the reference to the discrepancy identified at paragraph 29 of the RFRL which in my judgment, in fact, does not reveal any discrepancy but is based on a misreading of the screening interview by the author of the RFRL. I would further sound the usual note of caution that is appropriate where a Judge seeks to rely on implausibility in circumstances where an event might be at best said to be unlikely, or conduct unreasonable or unwise, rather than actually implausible. Again, having said that, I bear in mind in context that the Appellant had addressed the question of the appropriateness of his conduct in contacting his mother - and it is suggested that it was entirely consistent with the nature of the dialogue that he had been having with her in respect of his exploration of Christianity. Be that as it may, it is not for me to re-try this issue now: suffice to say that were it necessary for me to explore this further I would very likely find further error in respect of this remaining strand of the Judge's reasoning.
33. Be that as it may, for the reasons already given I find that the decision of the First-tier Tribunal Judge is in error of law and requires to be set aside. It is common ground that it should be reheard with all issue at large before the First-tier Tribunal.

Notice of Decision

34. The decision of the First-tier Tribunal Judge contained material errors of law and is set aside.

35. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Telford with all issue at large.

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.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **11 March 2016**

Deputy Upper Tribunal Judge I A Lewis