Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/08169/2015**

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 20th April 2016	**On 27th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR ALI HOSSEINPOOR MALATI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Makeda Christopher (LR)
For the Respondent: Ms R Petterson (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hetherington, promulgated on 5th October 2015, following a hearing at Birmingham, Sheldon Court on 23rd September 2015. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Iran, who was born on 2nd February 1982. He appealed against the decision of the Respondent dated 12th May 2015, refusing his application for asylum under the Refugee Convention, and his application for humanitarian protection under paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that he has been involved in Iran in activities with Erfan Halgheh, and has a well-founded fear of persecution. He has converted to Erfan Halgheh. His sister had been hanged by the authorities on 13th May 2009 because she had converted from Islam to Christianity. Shortly after this his wife had left him. He was left with a 2 year old daughter. He was broken hearted so started attended Erfan Halgheh classes by his friend. These lasted eight terms. Each lasting for one to two months for which he was given a card to confirm his completion of a course. The basis, he claimed, of Erfan Halgheh is that everything in his universe is created by one God and every living being is entitled to live. This is a personal viewpoint, according to the Respondent Secretary of State, who rejected the claim. This was because the practical aspect of Erfan (mysticism) is based on establishing a link to the several circles (Halgheh) of the "cosmic consciousness" to which an entire pathway of exploration and transformation is open, and would be applicable in daily life.

4. The Appellant's case was that whereas Islam requires you to fear God Erfan Halgheh teaches that God loves you and it is an alternative medication and it does not claim to be a religion (see paragraph 10).

The Judge's Findings

5. The judge held that the Appellant had demonstrated the knowledge of Erfan Halgheh. He was not satisfied that the Appellant had simply learned details about Erfan Halgheh rather than to have experienced it. The judge said "he provided a plausible account of his activities in Iran in his interview" (paragraph 17). One of the things taken against the Appellant by the Secretary of State was that the Appellant had consumed alcohol but the judge observed that, "the Appellant concedes that he briefly (and illegally within Iran) turned to alcohol in the depths of despair following his sister's execution and his wife leaving" (paragraph 18). The judge also observed how the HOPO had stated that there was no evidence of the Appellant preaching or evangelising Erfan Halgheh, but the judge held,

> "I questioned why a lack of evidence of preaching or evangelising is relevant. Religions (for example Judaism, Christianity and Islam) usually have a system of beliefs, doctrines and practices and their own body of scripture. I have seen no evidence that Erfan Halgheh

has. There is no universally accepted definition of religion" (paragraph 19).

6. The judge went on to conclude that given the reasons that he had set out it was much more likely than not that the Appellant was a student of Erfan Halgheh.

7. The appeal was allowed.

The Grounds of Application

8. The grounds of application state that the judge erred in law by failing to make any findings on the risk on return to the Appellant arising out of his conclusion that the Appellant was a student of Erfan Halgheh. He also failed to make any findings on the identity of the persecutors. There was also no finding as to how people would identify the Appellant as a student of Erfan Halgheh.

9. On 22nd October 2015, permission to appeal was granted. The determination was extremely brief and it was arguable that the judge had failed to identify and resolve any key conflicts in the evidence.

10. An undated Rule 24 was entered by the Appellant's Counsel, and the Rules 24 response makes no detailed submission but to say that this was nothing more than just a disagreement with the Tribunal's cogent finding.

Submissions

11. At the hearing before me on 20th April 2016, the Appellant was represented by Mrs Makeda Christopher, and the Respondent was represented by Ms R Petterson. Ms Petterson submitted that the judge made no findings as to what happened to the Appellant in Iran. Given that so much of the case put forward by the Appellant was disputed in the refusal letter, the judge gave an extremely brief determination, and should have dealt with issues of disputed fact. Given that this had not been done, there was an error of law.

12. For her part, Mrs Christopher submitted that this was simply a disagreement with the judge's findings. The judge had (at paragraphs 21 to 26) stated his conclusions as to the credibility and the refugee issues before him. He had found the Appellant to be credible. The judge had not one but two bundles of documentation before him. At paragraphs 5 to 6 the judge summed what he was required to determine and this was the correct approach to the law. The judge accepted that the Appellant was an illegal disciple of the Erfan Halgheh movement. Whilst this was accepted, it was only to be expected that the judge would then allow the appeal.

13. In reply, Mrs Petterson submitted that the judge did not make findings on a great deal of the Appellant's case. To refer to paragraphs 21 to 26 was insufficient. She asked that I make a finding on an error of law and I remit the case back to the First-tier Tribunal.

Error of Law

14. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law, such that I should set aside the decision (see paragraph 21(1) of TCEA 2007. My reasons are as follows.

15. First, whereas the case of **Budhathoki (reasons for decisions) [2014] UKUT 00341** makes it quite clear that, "it is generally unnecessary and unhelpful for First-tier Tribunal Judges to rehearse every detail raised in a case", that case also makes it quite clear that, "it is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost" (see **Hadden – Cave J**).

16. For example, paragraph 24 of the refusal letter criticises the Appellant for being vague about when the movement was founded. The Appellant only said "about 30 years ago". He was asked to name the two healing approaches of Erfan Halgheh to which the Appellant provided an example of someone having an illness and would announce it to the class who would then ask for energy from God for you.

17. When asked about the specific names given to the two healing approaches, the Appellant was not able to identify both healing approaches and distinguish the two, and instead gave a generalised view on how the individual could possible be cured from an illness. He was asked what Irfan Halgheh states about the universe and he said that everything in this universe has been created by one God and every living being is entitled to live. This, was a "more of a personal viewpoint which is not supported objectively".

18. The Appellant's description regarding Evangelism was vague (see paragraph 27). The refusal letter also did not accept that the Appellant evangelised. Since arriving in the UK he stated that he did not require a specific place to make a connection with God because this can be achieved anywhere and the refusal letter observes that this was considered evasive (paragraph 29).

19. The Appellant also failed to provide a compelling and comprehensive account of his reasons for becoming a follower of Erfan Halgheh (paragraph 31). These are matters that the judge should have expressly considered and resolved as disputed issues of fact.

20. Second, the suggestion that the judge did so from paragraphs 21 to 26 is not persuasive because all that these paragraphs do is simply state that, "the Appellant has made a genuine effort to substantiate his asylum claim" (paragraph 22) or that "the Appellant has given a coherent and plausible account that does not run counter to the available general or specific information relevant to his case" (paragraph 24). The fact is that the evidence does not properly set out in relation to the disputed issues of fact.

Remaking the Decision

21. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. Under Practice Statement 7.2, the Upper Tribunal may remit the case to the First-tier Tribunal where the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that I having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal (see Practice Statement 7.2(b)).

Notice of Decision

22. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Hetherington, under Practice Statement 7.2(b) so that it can be heard by a judge other than Judge Hetherington.

23. No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Juss 23rd July 2016