Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00873/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination issued**
on 13 December 2017	**on 14 December 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[A B]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Reprsentation:
For the Appellant: Mr G P McGowan, of Quinn, Martin & Langan, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Iran, sought asylum based on his conversion from Islam to Christianity.

2. The respondent refused his claim for reasons explained in her letter dated 13 January 2017.

3. First-tier Tribunal Judge Mrs D H Clapham heard the appellant's appeal on 27 February 2017 and dismissed it by a decision promulgated on 4 July 2017.

4. The appellant's grounds of appeal to the UT are set out in the 8 paragraphs of his notice dated 13 July 2017. The grant of permission was not restricted.

5. Mr McGowan submitted firstly on paragraph 1 of the grounds, "… no explanation within the decision why it was not reasonably practical to issue it more timeously especially when dealing with a vulnerable child in respect of whom issues of credibility were noted to be key (paragraph 57)". He drew attention to the expectation that decisions would be issued within 14 days, and to the principle that, having regard to the overriding objective, delay might be incompatible with rule 2 (1) (e) of the Tribunal Procedure (FtT) (IAC) Rules.

6. Although Mr McGowan began by describing this as a "preliminary issue", he accepted in course of his submission that delay alone was not a ground on which the decision might be set aside. He then advanced the point as one to be taken along with the other grounds.

7. At paragraph 87 the judge said, *"It is telling that the appellant does not know how many times he attended the house church"*. However, his oral evidence recorded at paragraph 32 was that he attended *"5 or 6 times but does not exactly remember"*. That appears to be consistent with records of his interviews and with his written statements. It is difficult to see anything in that small degree of inexactitude which might be telling against credibility.

8. Paragraph 90 of the decision begins with two sentences narrating part of the appellant's evidence and continues, *"All of this account lacks credibility …"*. The decision does not say why. The events narrated are not self-evidently preposterous.

9. The respondent had no effective answer to any of the foregoing criticisms.

10. There was also some force in the submission that the judge went wrong at paragraph 89 in saying that the appellant *"was unable to give any details"* of others who attended the house church, whereas at paragraph 33 she recorded that he *"named some by their first names"*.

11. Mr McGowan submitted that there was another obvious error at paragraph 86, in that the judge misunderstood the evidence, and the appellant had not claimed to have converted overnight. After full reference by both sides to the underlying evidence, however, it appears that the judge's understanding of the evidence on that point might well be supportable.

12. There was also debate on whether the judge went wrong by failing to accept that the appellant was abused by an Islamic teacher, when that had not been rejected by the respondent, or by failing to decide the point; by failing to take account of difficulty in relating in such evidence; and in failing to resolve what was to be expected of his memory. It is not always possible or necessary to resolve every issue of fact, especially if distant in

time, and not directly part of the claim; what must be decided is whether the appellant established the facts on which his claim turns. These are all points which do not raise obvious errors of law, but rather factual matters which may be live at the fresh hearing.

13. I indicated at the hearing that the case would be remitted.

14. A period of three months delay was at one time a rough guide for setting a decision aside. This decision was delayed for over four. An inference that something has been overlooked or forgotten will be more readily drawn where there has been delay, particularly when the decision contains no explanation for the delay (see *Macdonald's Immigration Law and Practice*, 9th ed., 20.136). In that context, the criticisms accepted above are sufficient to show that the decision cannot safely stand as a resolution of the appellant's case.

15. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.

16. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 to **remit the case to the FtT** for an entirely fresh hearing.

17. The member(s) of the FtT chosen to consider the case are not to include Judge D H Clapham.

18. No anonymity direction has been requested or made.

14 December 2017
Upper Tribunal Judge Macleman