



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

Appeal Number: PA014202017

THE IMMIGRATION ACTS

**Heard at Field House
On 19 June 2017**

**Decision & Reasons Promulgated
On 11 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

[W A]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Longhurst-Woods, Counsel instructed by Direct Access Solicitors

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Afghanistan, date of birth [] 1989, appealed against the Respondent's decision, dated 1 February 2017, to refuse an asylum claim and claims for protection. The appeal came before First-tier

Tribunal Judge Abebrese who, on 7 April 2017 promulgated his decision [D] in which he dismissed all claims either for protection or under Article 8 ECHR. Permission to appeal was given by First-tier Tribunal Judge Kimnell on 4 May 2017 on the basis that the judge's consideration failed to properly address the claim that the Appellant feared persecution by reason of his renunciation of the Muslim faith. The further basis was asserted procedural irregularity because the judge had declined to adjourn the case; given the absence of translated documents and two witnesses who were not available on the day.

2. The Respondent made a Rule 24 response on 23 May 2017.
3. It is clear from the Reasons for Refusal Letter that the author dealt with and addressed the Appellant's claim to have renounced his Muslim faith. The issue was addressed in preparation for the case in the Appellant's witness statement. Unfortunately there had not been prepared in advance witness statements from either Dr Milonidis, a lecturer of the Appellant's at the [] University or by a friend of the Appellant, Mr Gentile, an Italian national, a fellow student and friend of the Appellant. In addition, I was told that Dr Milonidis could not attend the hearing and Mr Gentile could not attend the hearing because he was absent in Italy.
4. The issue of the untranslated documents was dealt with by the judge on the basis that he would rely upon and accept the Appellant's interpretation of the documents.
5. The key to the complaint about the conduct of the judge in failing to grant an adjournment is given substance by the manner in which the judge addressed the issue. First, but it may not be of significance, the judge addressed the matter as if the Appellant was seeking protection on the basis of an imputed political opinion and in reciting this matter whilst noting that the Appellant claimed to have renounced his faith, (D8), and in the later discussion [D23] and [D4] simply rejected the Appellant's

credibility. In those circumstances the value of the documentation being a factor emanating from a local tribal council became far more significant in terms of the fair assessment of the evidence. It also became more significant when both Dr Milonidis and Mr Gentile speak of the Appellant addressing and renouncing or having a diminution in the extent of his faith hitherto in the Muslim faith. Their absence therefore became, given the way the case proceeded, far more potentially significant. Without considering the overall merits and the development of his renunciation of the Muslim faith, in effect apostasy, providing a separate refugee *sur place* claim.

6. I regret to say that the judge did not deal with this case adequately and the reasoning that he discloses is at least potentially flawed in terms of a fair assessment of the totality of the evidence. In these circumstances I am satisfied that the errors made by the judge first in failing to address the evidence in a fair and considered manner but also in taking adverse points against the Appellant's credibility not least in the light of his acceptance of the Appellant's account of and translation of the documents. The Original Tribunal's decision is unsafe. The Original Tribunal's decision cannot stand and the matter will have to be re-made. It seems to me that it will have to be re-made in the First-tier Tribunal.

DIRECTIONS (ORAL DIRECTIONS GIVEN AT HEARING)

7. Relist to First-tier Tribunal [] not before FtT] Abebrese.
8. Time estimate - 3 Hours
9. Two to three witnesses including the Appellant.
10. Any new statements served ten days before further hearing.
11. Respondent to serve their bundle on the Appellant by Friday, 29 June 2017.
12. No anonymity direction is made.

Signed

Date 8 August 2017

Deputy Upper Tribunal Judge Davey