



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

Appeal Number: PA/02227/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 12 February 2018**

**Decision & Reasons
Promulgated
On 21 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

[H D]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Nollett

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Iran. He was born on [] 1984.
2. He appealed against the respondent's decision to refuse asylum, humanitarian protection and on human rights grounds dated 15 February 2017. In a decision promulgated on 22 September 2017, Judge Devittie (the judge) dismissed the appellant's appeal because he did not find the appellant to be a credible witness and that he would not be at risk on return.

3. The grounds claimed that the judge reached credibility findings not reasonably open to him on the evidence, failed to give adequate reasons for concluding that the appellant's claim to be a *genuine* Christian convert was not reasonably likely to be true and failed to make findings on material matters.
4. In a decision dated 16 November 2017, Judge Pickup refused permission to appeal. He said:

*"The grounds do not disclose any arguable material error of law. The judge was entitled to apply **Devaseelan** and take the previous decision of the Tribunal as the starting point. However, the judge gave clear and cogent reasons for rejecting as not credible the claimed Christian conversion. That a witness may have been found credible in a different appeal, that of the appellant's brother, is not directly relevant and not the starting point for assessment of that witness's evidence. The other grounds of appeal are minor points, attempting to pick apart the decision rather than consider it as a whole. Neither was it necessary for the judge to consider a risk on return on the basis of having made a false claim to be a Christian convert."*

5. The grounds were repeated. Upper Tribunal Judge Rintoul granted permission on 2 January 2018. He said inter alia:

*"Given the importance of whether the appellant is a genuine convert to Christianity, it is arguable that the judge failed to identify properly why the choice of church counted against the appellant, given the continued attendance (grounds, [15]; decision at [24(v)]). It is also arguable that the judge has, in the light of **SA (Iran) [2012] EWHC 2575** failed adequately to explain why he did not attach much weight to the evidence of Rev. Roissetter and Pastor Robling given the length of time the appellant had attended church and his other activities. What is stated at [25] is somewhat confusing and appears to indicate that the judge considered that the appellant had to prove that he had not concocted a false claim which is arguably an error."*

6. There was no Rule 24 response.

Submissions on Error of Law

7. Ms Nollett relied upon the grounds. Pastor Roissetter attended the hearing to give oral evidence and Pastor Robling, from a church the appellant attended in Swansea, sent a letter of support. The appellant had been baptised in Swansea in 2014 until he moved to London in 2015. The judge set out the appellant's claim to have been converted to Christianity and the evidence in that regard at [13]-[23]. The judge had no concerns regarding the evidence of the witnesses in terms of their strongly held belief in the appellant's credibility. He went on to say at [24] that there were a number of features of the appellant's evidence and background that he found disturbing and which in his view, significantly undermined the evidence that had been presented to support the conclusion that he was a genuine Christian convert.

8. The judge failed to engage with **SA (Iran)** and failed to give adequate reasons for his decision. Further, the judge failed to engage with the appellant's argument that he would be at risk on return in terms of the "pinch point" identified in **AB and Others Iran [2015] UKUT 257 (IAC)**.
9. Mr Mills submitted that **SA (Iran)** was not binding upon the judge. It was insufficient merely for the appellant to claim that he had been attending church. The appellant had not been found to be a truthful witness in the past. He had made an unsuccessful asylum application and only three months after he had exhausted his rights of appeal, claimed to have joined the church in Swansea.

Conclusion on Error of Law

10. I find the grounds are made out. It is true that the judge was entitled to take into account the appellant's poor history. He had told lies previously in an attempt in succeeding in an asylum claim. **Danian [1999] EWCA Civ 3000** was relevant in that although the appellant's credibility might be likely to be low, the judge was under an obligation to rigorously scrutinise the new claim. In my view, the judge carried out an erroneous assessment of the evidence. At [25] the judge errs because he expects the appellant to prove a negative:

"25. I have considered carefully the evidence of the pastors who gave evidence in support of the appellant. I find that the appellant has failed to show on the lower standard, that his claim to be a genuine convert to Christianity, is not a second attempt on his part, to concoct an entirely false basis for asylum. In this instance, the claim he makes no doubt requires him to play and look the part - for without that he would not get the crucial backing of the church elders in the UK."

11. The judge fails to give any reasoning or any adequate reasoning for his findings that the appellant is not a genuine Christian convert except for his previous untruthful asylum claim, his exploration of Christianity only three months after he was appeal rights exhausted and the fact that he and his brother stumbled upon Haven Green Baptist Church, rather than putting a great deal of thought into the church he decided to attend. Given the considerable evidence from the pastor and member of City Church Swansea and the pastor of Haven Green Baptist Church, the judge was under an obligation to engage with the same rather than his approach which was to expect the appellant to show that his conversion to Christianity was not a second attempt on his part to concoct a false basis for asylum.
12. I find the judge materially erred in his analysis for the reasons I have set out above.

Notice of Decision

13. The decision of the First-tier Tribunal contains errors of law, is set aside and shall be remitted to the First-tier Tribunal for a de novo hearing.

No anonymity direction is made.

Signed

Date 12 February 2018

Deputy Upper Tribunal Judge Peart