



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

Appeal Number: PA/03045/2017

THE IMMIGRATION ACTS

**Heard at Manchester
On 23rd February 2018**

**Decision & Reasons Promulgated
On 8th March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**M G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T D H Hodson of Elder Rahimi Solicitors

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge Tobin (the judge) of the First-tier Tribunal (the FtT) promulgated on 9th May 2017.
2. The Appellant is an Iranian citizen who claimed asylum on the basis that he had converted from Islam to Christianity. His claim for international protection, and human rights claim, was refused by the Respondent on 10th March 2017. His appeal was heard by the FtT on 25th April 2017.

3. The judge did not accept that the Appellant had genuinely converted to Christianity and the appeal was dismissed on all grounds.
4. The Appellant applied for permission to appeal to the Upper Tribunal relying upon four grounds which are summarised below.
5. Ground 1 contends that the judge erred in his treatment of documentary evidence. The judge found in paragraph 27 that the Appellant's brother and his wife had not lodged a complaint against the Iranian Security Forces. It was contended that the judge had failed to set out accurately the correct context to the complaint and failed to take into account the documentary evidence that had been provided in support. The complaint was in relation to the unlawful death of the Appellant's father as a consequence of the actions of a particular member of the security forces. The Appellant had provided a Death Certificate and Burial Licence, but these documents had not been considered by the judge. The judge had not considered the court summons that had been issued. The judge had not taken into account the detailed account regarding the death of the Appellant's father, provided by the Appellant's brother in a letter.
6. Ground 2 contends the judge erred by giving inadequate reasons for finding the Appellant's account not to be "convincing", and failed to take into account relevant evidence. It was contended that the judge had not referred to or analysed the explanation that the Appellant gave for his commitment to Christianity. The judge had failed to explain why the Appellant's account was inherently unconvincing.
7. Ground 3 contends that the judge erred by giving no weight to a statement of Reverend Pybon a Minister in the Appellant's church. Reverend Pybon was unable to attend the hearing so a colleague attended to give oral evidence. Reverend Pybon had however submitted a very detailed statement on the Appellant's behalf. It was contended that the judge had erred by in effect giving no weight to Reverend Pybon's statement on the basis that it appeared to exceed matters of fact and strayed into effectively advocating for the Appellant. It was contended that the judge had erred by failing to particularise or properly justify such an adverse finding.
8. Ground 4 contends that the judge erred by relying on irrelevant and potentially prejudicial reasons which caused an adverse finding. This ground related to paragraph 24 in which the judge made reference to "convincing" and "unconvincing" and referred to being aware of similar stories to that put forward by the Appellant, in other claims, which the judge described as weak. It was submitted that it was not appropriate for a judge to make a finding against an Appellant, on the basis of the judge's attitude to other claims.
9. Permission to appeal was initially refused by Judge O'Garro, but a renewed application was granted by Upper Tribunal Judge Canavan in the following terms;

“2. It is at least arguable that the judge might have failed to make findings in relation to evidence that was material to a proper determination of the appeal. It is also arguable that the judge may have placed undue reliance on the plausibility of various aspects of the Appellant’s account without taking into account relevant evidence. It is arguable that he might have applied too high a standard of proof in apparently needing to be ‘convinced’ by the Appellant’s account. It is also arguable that the judge may have been unduly influenced by irrelevant matters regarding his view of the credibility of ‘very similar stories’ in other cases.”

10. Following the grant of permission the Respondent submitted a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was contended, in summary, that the judge had not materially erred but had made findings open to him on the evidence, and provided sustainable reasons. It was not accepted that the use of the word “convincing” identified a wrong standard of proof, as the judge had at paragraphs 16 and 31 referred to the appropriate standard of proof. It was submitted that the FtT decision should stand.
11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

The Upper Tribunal Hearing

12. I heard oral submissions from both representatives which are set in full in my Record of Proceedings and summarised in brief below.
13. Mr Hodson relied upon the grounds contained within the application for permission to appeal. It was submitted that a great deal of evidence had been presented on behalf of the Appellant, and the judge had erred by failing to address key parts of the evidence.
14. It was contended that in relation to documentary evidence the judge had not applied the principles in Tanveer Ahmed [2002] UKIAT 00439 and this applied in particular to the documents relating to the death of the Appellant’s father. Mr Hodson submitted that the use of the word “convince” indicated an incorrect standard of proof, as this indicated that initially the judge did not believe the account.
15. It was contended that inadequate reasons had been given for adverse findings.
16. It was submitted that it was legitimate for Reverend Pybon to comment on matters that were relevant to the Appellant’s Christian faith, and this should not diminish the weight that the judge gave to her written evidence.
17. It was submitted that in making findings, the judge should not refer to other cases which he contends are similarly weak.

18. Mrs Pettersen relied upon the rule 24 response. It was submitted that the judge did not have to refer or set out each individual piece of evidence, and the judge gave an accurate summary of the evidence which was sufficient. Mrs Pettersen submitted that the judge had considered all relevant matters, made findings open to him, and given sustainable reasons for those findings. It was unfortunate that the judge had made reference to the word “convincing”. This did not mean that an incorrect standard of proof had been applied.
19. With reference to Reverend Pybon it was submitted that the judge was entitled to give less weight to her evidence because she did not attend the hearing. Mrs Pettersen submitted that Reverend Pybon had in fact advocated on behalf of the Appellant which also entitled the judge to give less weight to her evidence.
20. It was submitted that the judge had referred to other cases, but had not dismissed the Appellant’s appeal because of those other cases. Mrs Pettersen submitted that the judge analysed the Appellant’s case and did not accept that it was credible based upon the evidence that the Appellant relied upon.
21. In response Mr Hodson accepted that the judge had referred to Tanveer Ahmed, but submitted that the principles had not been applied. It was accepted that a judge does not have to recite all the evidence or all the documents, but does need to engage and make findings upon relevant evidence, and evidence that is in dispute.
22. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

23. I deal firstly with ground 1 which relates to paragraph 27 of the FtT decision. I find an error of law as contended on behalf of the Appellant for the following reasons.
24. There was documentary evidence before the FtT, in the form of a Death Certificate and Burial Licence which related to the Appellant’s father. Those documents indicated a violent death. There were also documents indicating that legal proceedings had been issued against a specific member of the security forces. The Appellant’s brother had provided written evidence setting out in some detail the complaint that had been made.
25. Documentary evidence is not specifically referred to at paragraph 27. I find no analysis of the documentation in that paragraph, and in my view inadequate reasons are given for not attaching any weight to the documents. The principles in Tanveer Ahmed are that it is for the person producing documents to show that the documents can be relied upon, and the decision maker must consider the evidence in the round. If no reliance is placed upon documents, it is incumbent upon a judge to provide

adequate reasons. In this case I do not find that the guidance in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) has been complied with. That guidance, very briefly, is that judges do not need to rehearse every detail or issue raised in a case as this leads to decisions becoming overly long and confused and is not a proportionate approach to deciding cases. Judges must however 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 won or lost.

26. It is not clear from reading paragraph 27 that the documents were analysed, and it is not clear why no weight has been attached to them. I do not find the judge's conclusion that if the Appellant was a genuine Christian convert, his brother and wife would not draw attention to themselves by challenging the security forces through the courts is an adequate reason for disregarding the documentary evidence.
27. I think it is appropriate to deal with grounds 2 and 4 together. These grounds relate to paragraphs 22 and 24 of the FtT decision. It is unfortunate that the word "convincing" is used in both those paragraphs. Elsewhere in the decision the judge does refer to the correct standard of proof, but in my view, it is not clear from reading these paragraphs, that the judge has considered whether the Appellant has proved his case to a reasonable degree of likelihood.
28. I conclude that inadequate reasons have been given for not accepting the Appellant's explanation of his conversion to Christianity. The following phrase in paragraph 24 gives an impression that the judge has not concentrated solely on the evidence in the Appellant's claim, but has been influenced by other claims of which he is aware;

"This and very similar stories are constantly advanced in such claims to establish how asylum claimants were put at risk by inadvertently leaving laptops, mobile phones and address books in the care of others. I do not find the story is convincing in other weak claims, and I also find this story particularly unconvincing in this instance."
29. There is an impression given that the judge has been influenced by irrelevant matters and failed to take into account relevant evidence, which is an error of law.
30. Finally I deal with ground 3 which relates to the written evidence of Reverend Pybon. The judge did not diminish the weight to be attached to her evidence because she did not attend the hearing as he specifically stated at paragraph 20 that he drew no adverse inference from her non-attendance, but the judge found that Reverend Pybon's statement appeared to exceed matters of fact and strayed into effectively advocating for the Appellant which diminished the weight that he placed upon her evidence. It would appear that the judge in fact placed very little weight upon her evidence. I do not find that adequate reasons have been given for placing very little weight upon this evidence. Reverend Pybon did comment upon the Respondent's reasons for refusal letter but only

commented upon issues relating to Christianity, and in my view Reverend Pybon was perfectly entitled to make comments upon that aspect. Paragraph 33 of the refusal letter refers to the Appellant's knowledge of the Protestant church, and questioned why the Appellant had only read small sections of the Bible. Those are matters upon which the Reverend is entitled to comment. Paragraphs 34 and 35 of the Respondent's refusal decision contend that the Appellant had demonstrated inability to speak clearly or in depth about his faith, and again that is something upon which the Reverend was perfectly entitled to comment in her capacity as the Minister of the church attended by the Appellant. I therefore do not find that a satisfactory or adequate reason was given not attaching weight to the written statement of Reverend Pybon.

31. For the reasons given above, I find that the FtT decision does contain errors of law, and is unsafe and must be set aside.
32. When I indicated at the hearing that I was reserving my decision in relation to error of law, both representatives indicated that if an error was found as contended by the Appellant, the appropriate course would be to remit the appeal back to the FtT for a fresh hearing.
33. I have taken into account paragraph 7.2 of the Senior President's Practice Statements, and because credibility is in issue, and there is a substantial fact-finding undertaking, I consider it appropriate to remit this appeal back to the FtT to be decided afresh with no findings preserved.
34. The parties will be advised of the time and date of the hearing in due course. The appeal is to be heard by an FtT Judge other than Judge Tobin.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the FtT with no findings of fact preserved.

Anonymity

I have decided to make an anonymity direction because the Appellant has made a claim for international protection. 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. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed
Deputy Upper Tribunal Judge M A Hall

Date: 3rd March 2018

**TO THE RESPONDENT
FEE AWARD**

The issue of any fee award will need to be considered by the FtT.

Signed
Deputy Upper Tribunal Judge M A Hall

Date: 3rd March 2018