



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

Appeal Number: PA/11417/2017

THE IMMIGRATION ACTS

**Heard at Bradford
On 7 December 2018**

**Decision & Reasons Promulgated:
On 21 December 2018**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**DF
(ANONYMITY DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Sills (Counsel)

For the Respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the claimant's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal (the tribunal) which it made following a hearing of 16 January 2018 and which it sent to the parties on 24 January 2018. In making its decision the tribunal dismissed the claimant's appeal from the Secretary of State's decision of 20 October 2017 refusing to grant him international protection.

2. The claimant is an Iranian national. He was born on 20 June 1977. He claims to have entered the United Kingdom on 28 April 2017 and it is recorded that he claimed asylum on that date. The basis of his claim was that he had converted from Islam to Christianity in Iran, that the authorities had found out, and that they would persecute him as a result.

3. The Secretary of State did not believe the claimant's account and that is why his claim to be entitled to international protection was rejected. His appeal was dismissed largely for the same reasons. But permission to appeal to the Upper Tribunal was both sought and granted.

4. The primary challenge in the grounds was to the effect that the tribunal had erred through refusing to grant an adjournment application which had been made on the claimant's behalf by his solicitor on the morning of the hearing. The background to that application and the reasons for refusing it appear at paragraphs 7 and 8 of the tribunal's written reasons. This is what the tribunal said:

“ 7. Mr Boyle started the hearing by making an application for an adjournment on the grounds that the Appellant's Dorian witness, Reverend Briggs, was unavailable to attend this rearranged hearing and submitted that it was essential that a member of the church vouched for the Appellant. I note that this matter was originally set down to be heard on 17 January but, due the lack of judicial resources, Mr Boyle was contacted by the tribunal on 11 January and was given the choice of having the matter heard today, or for the hearing to be postponed to a later date instead. Mr Boyle tells me that he chose not to have this hearing postponed as he thought it would look as if he was being unhelpful, so he agreed for it to be heard today and he contacted the Appellant and asked him to make the appropriate arrangements with the church, as is his firm's normal practice. Mr Boyle says that he was only informed this morning by the Appellant that no one from the church would be attending. The Appellant says he knew on Saturday that Reverend Briggs would not be attending but he was told at the last minute that no one else was available to attend in his place.

8. I note that this matter is ready to be heard, the bundles have been exchanged and the Appellant is present today to give evidence. Keeping in mind the overriding objective to deal with cases justly and fairly, I refused that Appellant's application for an adjournment, particularly as the letter from Reverend Briggs at page 10 of the Appellant's bundle provides a telephone number, fax number and email address but Mr Boyle made no attempt to contact the church to secure the attendance of the relevant witness, but left all the arrangements to the Appellant who is not conversant with the Tribunal's procedure for dealing with postponement requests in advance of hearings, or the English language, which is not in keeping with the requirement that the parties must help the Tribunal to further the overriding objective (Rule 2(4) of the Tribunal Procedure Rules 2014). In making my decision not to grant the adjournment I take into account Mr Stainthorpe's submission that he does not intend to look behind the letter from Reverend Briggs at page 10 as it clearly expresses his personal belief at the time of writing the letter. I am also mindful that the Appellant's claim is about his alleged introduction to Christianity whilst living in Iran and the reasons he fled Iran, to which Reverend Briggs would not be able to speak.”

5. Pausing there, Mr Boyle is the claimant's solicitor. Mr Stainthorpe is the Presenting Officer who represented the Secretary of State before the tribunal. Reverend Briggs is an Associate Rector at a church which the claimant attends.

6. The tribunal returned to the theme of the adjournment at a later point in its written reasons. At paragraph 60 it said this:

“ 60 Mr Boyle has threatened on several occasions to appeal the findings of this Tribunal for failing to allow him to produce Reverend Briggs as a witness. Notwithstanding my comments above on the application for an adjournment, I note that the Appellant has not said in his witness statement, signed on 10 January 2018, or in evidence in chief or in re-examination that he attends St Georges church more than the minimum of once a week or that he is involved in any kind of activities through the church or out of church with the church members. Nor has he given any account of how he practices his claimed new faith in the UK. Therefore, it is difficult to see what Reverend Briggs could possibly add to his letter at page 10 of the Appellant’s bundle to corroborate the Appellant’s evidence when he himself has given no evidence at all of his alleged Christian activities in the UK. Mr Boyle had the opportunity to adduce evidence in chief and ask questions in re-examination but chose to do neither. Whilst Reverend Briggs has expressed his belief in the genuineness of the Appellant’s faith in his letter at page 10 on his observations, I have assessed the matter in the round in light of all the evidence from the Appellant, the screening interview, the asylum interview and the documents in the bundles.”

7. I have concluded, though not without some hesitation, that notwithstanding its otherwise careful, thorough and cogent written decision, the tribunal did err in its consideration of the adjournment request. I shall now explain why I have taken that view.

8. The appeal had been listed for hearing on 17 January 2018. It is unfortunate (and it is nobody’s fault) that due to the lack of judicial resources, the appeal could not proceed on that day. Reverend Briggs was available to attend on that day. The tribunal had contacted the claimant’s representative and he had agreed, I accept in an attempt to be helpful, that the matter should be heard on 16 January 2018 instead. But unfortunately, it seems he had made that agreement without checking with Reverend Briggs whether he would be available. As it turned out, he was not available on that date, and that is how the adjournment request came to be made.

9. It would, it seems to me, have been very easy for a check to have been made with Reverend Briggs prior to agreeing a date for the relisting of the appeal. It would probably have been a matter of a simple and brief telephone call. But that was never done. In my view the tribunal was right to be concerned that that step had not been taken. But, following what was said by the then President of the Upper Tribunal (Immigration and Asylum Chamber) in *Nwaigwe (Adjournment: Fairness)* [2014] UKUT 00418 (IAC) fairness was the primary consideration with respect to the adjournment application. Notwithstanding what is subsequently said at paragraph 60 of the written reasons, it seems to me clear from what was said at paragraph 8, that the tribunal attached considerable prominence (as is demonstrated by its use of the word “particularly” within paragraph 8) to what it perceived (I think probably rightly) as a failure on the part of the claimant’s representative to check the availability of Reverend Briggs. Such might have been relevant as a peripheral consideration but the tribunal’s primary focus had to be upon whether or not, without the presence of and oral evidence of Reverend Briggs, he would have a fair hearing. That seems not to have been the primary focus of the tribunal.

10. I did wonder whether, in fact, it might be thought that the presence of Reverend Briggs would have made no difference. That, in a sense, is what the tribunal was suggesting at paragraph 60 of its written reasons. Reverend Briggs had provided a brief undated letter appearing at page 10 of a bundle of documents filed on behalf of the claimant. It may be inferred from the content of that brief letter that he had taken the view that the claimant is a genuine Christian convert. But the letter does not really explain why he had taken such a view. There was no witness statement from him which might be surprising given the importance Mr Sills argued should be attached to what are described as “Darodian witnesses”. I was given no explanation at all as to why

a statement had not been provided. It seemed to me entirely possible that, if Reverend Briggs had attended the appeal in these circumstances, he would have just been invited in evidence-in-chief to confirm the content of his letter and he might not have been cross-examined upon it at all given the paucity of detail it contains. If that were the case then, of course, the presence of Reverend Briggs would have taken matters no further forward.

11. Having said all the above, though, it is really quite difficult to predict what a witness who did not give oral evidence might have said had he/she done so. I cannot dismiss the possibility that Reverend Briggs would have been asked questions by way of examination-in-chief and in cross-examination, which would have led to his explaining in a way which the tribunal might have found to be persuasive, why it was that he believed the claimant was a genuine convert to Christianity. Such evidence might have impacted upon the tribunal's view of that matter. That might, in turn, have impacted upon its view as to whether the claimant had in fact converted whilst in Iran and, if so, whether that had led to his experiencing problems there. The tribunal had resolved all of those matters against the claimant. So, I have concluded that the tribunal's decision to refuse the adjournment request did lead to the claimant having a hearing which was not a fair one. That is not, however, to be construed as a criticism of the tribunal. But, nevertheless, its decision has to be set aside. I would, though, wish to make it clear that whilst Mr Sills also sought to argue that the tribunal had failed to give adequate reasons for its decision, I would not have set aside its decision on that basis or even come close to doing so. As I have already said, its reasoning was thorough and cogent on the basis of the material which was before it. It is simply that its conclusion might have been different had it heard from Reverend Briggs.

12. Having decided to set aside the decision of the tribunal I have also decided to remit. There will, therefore, be a complete rehearing of the appeal before a differently constituted First-tier Tribunal. Nothing shall be preserved from the tribunal's decision and the tribunal rehearing the appeal must consider all matters raised by the appeal, both fact and law, entirely afresh.

13. Accordingly, I direct that there be a complete rehearing of the appeal before a differently constituted First-tier Tribunal. I shall leave any other directions to the First-tier Tribunal to issue. I would, however, strongly suggest that if Reverend Briggs is going to give evidence at the rehearing, his availability should be carefully checked and a witness statement, sufficiently detailed to stand as evidence-in-chief, should be provided.

Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. Further, the case is remitted for rehearing before a differently constituted First-tier Tribunal.

The claimant was granted anonymity by the First-tier Tribunal. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall name or otherwise identify the claimant or any member of his family. This direction applies to all parties to the proceedings. Any failure to comply could lead to contempt of court proceedings.

Signed:

Date: 13 December 2018

Upper Tribunal Judge Hemingway