Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/13081/2016**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 18th April 2018	**On 1st May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR E.R.
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs Pettersen, Senior Home Office Presenting Officer
For the Respondent: Mr N. Vaughan, Solicitor

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a First-tier Tribunal (Judge R.L. Walker) allowing the appeal of Mr E.R. against the Secretary of State's refusal to grant his protection claim on account of his conversion from Islam to Christianity.

2. For the sake of clarity throughout this decision I shall refer to the Secretary of State as "the Respondent" and to Mr E.R. as "the Appellant" reflecting their respective positions before the First-tier Tribunal.

Background

3. The Appellant entered the UK on 7th July 2014, having left Iran by lorry on 28th June 2014. He had travelled through various unknown countries and was encountered by Essex Police on his arrival in the UK. He claimed asylum the same day (the first claim).

4. The basis of the first claim to asylum was that he could not return to Iran because, he said, he had been accused there of spying for the Israeli government. Suffice to say for the purposes of this decision, the Respondent disbelieved his claim as wholly incredible and refused it. He appealed the decision refusing his first claim to the FtT and his appeal came before that Tribunal on 22nd January 2015. The FtT Judge, having heard from the Appellant and considered the evidence put before her, made findings comprehensively disbelieving the Appellant's account. She said at [20] of her decision "I completely reject his claim as lacking all credibility."

5. By 13th April 2015 the Appellant was appeals rights exhausted. On 13th June 2016, the Appellant lodged further submissions claiming that he had converted to Christianity (the second claim). Those further submissions included a witness statement from the Appellant dated 12th April 2016 in which he said that started attending church in the autumn of 2014 and had been baptised on 6th December 2015 at St Augustine's Church in Halifax. He also maintained in that witness statement that the account given by him in his original asylum application (i.e. the first claim) was true and correct.

6. The Respondent interviewed the Appellant about his claim to have converted to Christianity, considered it and refused it by a decision set out in her refusal letter of 15th November 2016. The refusal letter set out that the responses given by the Appellant in interview were vague, generalised and did not give the impression that the conversion was genuine. The timing of the conversion and the Appellant's failure to mention his burgeoning interest in Christianity during the hearing of the first claim led the Respondent to the conclusion that the second claim was an opportunistic one. Thus the Appellant's credibility was in issue.

7. The Appellant appealed the refusal and the appeal came before the First-tier Tribunal on 15th December 2017. The FtT allowed the appeal and it is this decision which forms the basis of the instant appeal before me.

Onward Appeal

8. The Respondent sought permission to appeal. The grounds seeking permission are lengthy but they are succinctly summarised in the grant of permission and I can do no better than set out the relevant parts here below:

> "The grounds assert that the Judge erred in the following ways. The Judge had failed to give adequate reasons for accepting that the Appellant was a genuine Christian convert in the face of matters adverse to his credibility and/or had been perverse in accepting the same. The Judge also misapplied the law regarding previous decisions on appeal and how to treat claimed conversions happening after previous asylum refusals.
>
> The Judge identified a series of matters which undermined the Appellant's credibility, but accepted the alleged conversion to Christianity apparently on the strength of evidence from his pastor. However, the Judge does not appear to have engaged with how evidence should be treated in the instant case which should have been placed before a pervious tribunal, or clearly explained why the evidence of the Appellant's pastor (and in particular the pastor's opinion on the sincerity of the Appellant's conversion) sufficiently allayed the Judge's concerns otherwise with the Appellant's credibility.
>
> It is arguable in the circumstances that the Judge made a material error in law. Permission is granted on all grounds pleaded."

9. Mr Vaughan on behalf of the Appellant served a Rule 24 response defending the decision.

10. Thus the matter comes before me to decide if the decision of the FtT contains such error of law that it requires to be set aside and remade.

Error of Law Hearing

11. Mrs Pettersen, for the Respondent, referred to and relied upon the grounds seeking permission. She emphasised by reference to [26.2] that the FtTJ had failed to follow his own self-direction. At [26.2], when discussing the first claim made by the Appellant, the judge said the following:

> "This earlier decision is relevant in so far as the Appellant's previous claim was found to be totally incredible. This must mean that his current claim needs to be considered with anxious scrutiny."

12. She then referred to [26.3] with particular emphasis on the final two sentences, where the judge said:

> "What I also consider to be relevant is that the Appellant's claim now is that he had started attending Church in the autumn of 2014 and soon started attending regularly. This must have coincided with the run up to his appeal hearing on 22nd January 2015. Despite this, there is no mention at all of this regular attendance of Church. I accept that the Appellant had not been baptised at this stage and he may well have not made the decision to convert but this would have been very important evidence that should have been disclosed. The Appellant was legally represented at the time and no proper explanation has been given as to why this evidence was not disclosed."

13. Mrs Pettersen emphasised that, having set out this key issue in the last two sentences of [26.3], nowhere has the judge gone on to assess that evidence and make a proper finding on whether this affects the Appellant's credibility concerning the second claim. This was an issue at the heart of the matter.

14. Therefore, she continued, instead of doing what he was tasked to do, the FtTJ simply sidestepped the issue, saying at [26.6]:

> "Whilst I do have some concerns about the Appellant's general credibility. (sic) I nevertheless accept what has been said by Reverent (sic) Hellewell. I therefore find that the Appellant has proven, to the relevant standard, that he is a Christian convert...."

15. This, Mrs Pettersen said, showed that the judge had taken an improper approach to the evidence. He had failed to provide rational reasons in respect of what were the material matters in dispute between the parties. Whilst it was accepted that the judge was entitled to find the supportive evidence of Reverend Hellewell to be credible, that did not entitle the judge to treat that evidence as determinative of the Appellant's credibility. The judge had appeared to delegate the task of determining credibility to the Reverend Hellewell, rather than making his own findings. In other words he had sidestepped the issues before him. This had led to an irrational decision, which meant that it was unsustainable. She asked that the decision be set aside and remitted to the First-tier Tribunal for a fresh hearing.

16. Mr Vaughan defended the decision. He referred to the Rule 24 response and said as a general proposition that the decision of the FtTJ is both intelligible and adequate. He referred to [25] where the judge said he had considered the totality of the evidence before him, and further had self-directed that the **Devaseelan** principles apply [26].

17. He said the judge took into account not only the evidence of the Reverend Hellewell but also that of the supporting church members and on that evidence came to a conclusion that the Appellant's conversion was genuine.

18. He said that the Appellant did not bring the matter of his conversion to the attention of the Tribunal at the first claim hearing, because at that time he had "not converted". The first claim hearing had been in January 2015 and he was not baptised until December 2015. Mr Vaughan submitted therefore there was no need for the Appellant to mention it. The decision was adequately reasoned and should stand.

Consideration

19. It is only if I am satisfied that there has been a material error of law in a decision, that I am entitled to set aside that decision. I also remind myself that reasons need only be adequate for them to be sustainable, and further that this Tribunal will not lightly interfere with the findings of a Tribunal properly directed.

20. However I find I am satisfied that the decision of the FtTJ is not sustainable and I now give my reasons for this finding.

21. As the grounds seeking permission state, the critical issue at hand in this appeal revolved around the credibility of the Appellant's conversion to Christianity and the timing of that conversion. To put it simply, the FtTJ was tasked with deciding the question of whether the conversion was a genuine one or an opportunistic one. Credibility lies at the heart of this appeal.

22. I find it was incumbent upon the FtTJ, being presented with the circumstances relating to this appeal, to resolve the material point of the Appellant's failure to mention his significant interest in Christianity at the first claim hearing. The judge himself referred to this as being important evidence which should have been disclosed and then fails to make a finding on whether it detracts from the overall credibility of the claim before him. I reject Mr Vaughan's argument that the Appellant did not bring the matter of his conversion to the attention of the Tribunal on the first occasion because he had not at that time converted and that the information was therefore not relevant to the proceedings. It is a matter which requires an answer.

23. Furthermore the Respondent set out in her reasons for refusal letter that one of the reasons why she doubted the Appellant's credibility revolved around his failure to mention his burgeoning Christianity at the appeal hearing dealing with the first claim. I find it is incorrect of Mr Vaughan to say that the fact that the Appellant had "not converted" made his lack of disclosure irrelevant. The issue was raised by the Respondent and was a matter which went to the heart of the Appellant's credibility. This was something which only the Appellant could answer.

24. I find therefore that Mrs Pettersen's submission that the FtTJ was deficient in dealing with this aspect of the claim is made out. Indeed reading the decision it is hard to see what the FtTJ is saying. He sets out what is the issue at [26.3] and confirms that this is very important evidence which should have been disclosed. He then makes no finding on whether or not that affects the Appellant's credibility.

25. Instead, he simply goes on to set out the Appellant's evidence which is that he is regularly attending church. He then refers to the evidence of Reverend Hellewell and the church members supporting him.

26. After setting out the evidence referred to above, judge says "Whilst I do have some concerns about the Appellant's general credibility. (sic) I nevertheless accept what has been said by Reverent (sic) Hellewell." Nowhere do I see that the judge has set out what his concerns are regarding the Appellant's credibility. In not so doing, it is hard to see whether the judge has exercised the appropriate caution necessary in cases of this kind and upon what basis the judge has reached a conclusion that the evidence of Reverend Hellewell should be treated as determinative. These errors are material errors.

27. I find therefore that the decision cannot stand. I set it aside in its entirety. The decision will need to be remade at a fresh hearing.

28. The decision should be remitted to be remade in the First-tier Tribunal. Because the fact finding is deficient, I am of the view that it cannot be said that the parties have had a fair hearing. In the interests of justice therefore I find that this is a matter which needs to be reheard afresh and that the First-tier Tribunal is the appropriate Tribunal for that hearing.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 29th December 2017 is set aside for material error. The matter is remitted to that Tribunal for a de novo hearing, before a judge other than Judge R.L. Walker.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed C E Roberts Date 26 April 2018

Deputy Upper Tribunal Judge Roberts