



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

Appeal Number: PA/05443/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> October 2019**

**Decision & Reasons  
Promulgated  
On 13<sup>th</sup> November 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**R I  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Lee of Counsel  
For the Respondent: Mr Singh a Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 1<sup>st</sup> January 1990 is a citizen of Afghanistan. The Appellant was represented by Mr Lee of Counsel. The Respondent was represented by Mr Singh a Presenting Officer.

**Substantive Issues under Appeal**

2. The Appellant had made application for asylum which had been refused by the Respondent on 20<sup>th</sup> May 2019. The Appellant had appealed that decision and his appeal had been heard by Judge of the First-tier Tribunal Moore sitting at Taylor House on 9<sup>th</sup> July 2019. The judge had dismissed the Appellant's appeal on all grounds.
3. Application for permission to appeal had been made and was granted on 27<sup>th</sup> August 2019. It was said that it was arguable that the judge had failed to consider separately the stand alone humanitarian protection claim, had made material errors of fact and arguably had not considered points made under Article 8 in the Appellant's skeleton arguments. Directions were issued for the Upper Tribunal firstly to decide whether an error of law had been made or not in this case and the matter comes before me in accordance with those directions.

### **Submissions on Behalf of the Appellant**

4. Mr Lee noted that there had been no separate consideration of humanitarian protection which was relevant in this case. It was submitted that the judge had not looked at Immigration Rules when considering Article 8 in particular paragraph 276ADE(vi). It was further noted that there had been a significant misreading of facts in that the judge believed the Appellant and his family had been in Kabul for 23 years prior to him coming to the UK when in reality it had only been a two to three year period. It appeared the judge had misread the evidence from an earlier decision. It was submitted that adverse credibility was made against the Appellant based on that misreading of the previous time spent in Kabul. Finally in terms of conversion it was said that no account had been taken of the Appellant's engagement with the church over a four year period.

### **Submissions on Behalf of the Respondent**

5. Mr Singh conceded that there was an error in that the judge had not separately considered humanitarian protection which may well be a relevant issue in this case. It was said that the judge had taken account of medical evidence as available. That was in relation to Ground 1 of the permission to appeal grounds.
6. At the conclusion I reserved my decision to consider the submissions and evidence provided which I now give.

### **Decision and Reasons**

7. The Appellant's claim was that he would face persecution in Afghanistan on the grounds of his conversion from Islam to Christianity and as a result of his ethnicity namely that of being an Hazara. The Appellant had initially claimed asylum in 2006 which had been refused but he had been granted discretionary leave on 26<sup>th</sup> July 2007 for a six month period. Thereafter the Appellant had remained in the UK and the Home Office had not removed him. The core of the Appellant's claim was that his family who

lived in Iran now had disowned him as a result of his conversion to Christianity and that he suffered from ill-mental health and would accordingly return to Afghanistan as a vulnerable person with depression and no family as well as being an Hazara (which was accepted).

8. The judge in this case properly had made reference to the principle in **Devaseelan** in respect of the First-tier Tribunal determination of 28<sup>th</sup> February 2011. It was noted that at that date the issue of conversion to Christianity was not before the Tribunal. The judge had noted the adverse credibility findings made by the judge in 2011 noting that the judge had rejected the core of the Appellant's claim and found that neither he nor his family had problems in Afghanistan at the time they left the country and equally would have no problems upon return.
9. At paragraph 23 the judge found that with the exception of the issue of conversion to Christianity the Appellant appeared to rely generally on the account that he had previously given before the Tribunal in 2011. He noted at paragraph 24 that whilst accepting that the decision in 2011 was only a starting point it appeared to him that no credible and reliable further evidence had been provided by the Appellant (apart from the issue of religious conversion). He found that in relation to the Appellant's ethnicity as a Hazara together with his asserted depression and anxiety was such that he would be vulnerable and a potential target of the Taliban or subjected to ill-treatment by the government. In support of that assertion the judge noted at paragraph 24

"The Appellant and his family lived in Kabul for 23 years prior to leaving Afghanistan for Iran and I am in agreement with the Tribunal Judge in 2011 that the Appellant's claim that he would be a risk in Kabul when his family were able to live there for 23 years without encountering problems and after the Appellant was returning a substantial number of years later as an adult to be totally implausible".
10. To that extent the judge in agreeing with and finding no point of dissension with the earlier judge had noted what he believed to be the finding of the earlier judge that the Appellant and his family had lived in Kabul for 23 years prior to the Appellant coming to the UK. In part and possibly a large part it was a reliance upon that lengthy period of time spent in Kabul that led this judge to conclude his agreement with the earlier judge in terms of potential risk on return. However it is clear that the judge had misread the earlier judge's decision. In 2011 the judge had referred to the Appellant and his family living in Kabul for a period of two to three years rather than 23 years as believed by this judge. That misreading may have had some significant bearing on the judge's assessment of risk on return to Afghanistan and perhaps in particular relocation to Kabul when considering paragraph 24 of his decision.
11. The fresh evidence that the judge needed to consider as he accepted was the Appellant's claimed conversion from Islam to Christianity. The judge had essentially considered that claim at paragraphs 25 to 30 of his decision. In respect of this matter the judge had considered the evidence

of Reverend Wylie and had noted the absence of evidence from the Appellant's ex-partner Julie Kelly who had introduced him to Christianity. The judge had concluded at paragraph 31 that whilst he accepted the Appellant may have been baptised and attended a Christian church in this country did not accept that he was a genuine Christian convert who would evangelise on return to Afghanistan or would have a need to falsify his faith on return. He provided adequate reasons for concluding that the Appellant was not a genuine Christian convert.

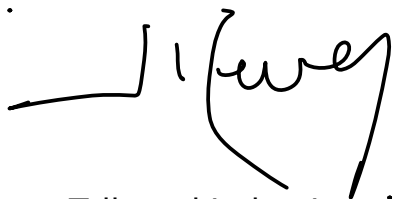
12. The Appellant's mental health in terms of anxiety and depression does not appear to have been a contested issue. The evidence in support of that is brief and essentially contained at pages 20 to 24 of the Appellant's bundle. The judge did not dispute the existence of that depression and anxiety and the fact that the Appellant was receiving medication but at paragraph 37 concluded that the Appellant was not a vulnerable adult with any particular mental health difficulties other than suffering from depression and anxiety for which he is receiving medication. There does not appear to have been any further analysis or discussion of that aspect of the evidence.
13. Significantly in this decision the judge at paragraph 35 found that having decided that the Appellant was not entitled to asylum that because of those findings "it also therefore follows that a claim for humanitarian protection must inevitably be dismissed as well".
14. It does not necessarily follow that a rejection of the asylum claim would automatically trigger a rejection of the claim for humanitarian protection. The judge's error in concluding the Appellant and his family lived in Kabul for 23 years coupled with any adequate assessment of his vulnerability are potentially not insignificant features when looking at the issue of humanitarian protection. The judge's dismissal of the humanitarian protection claim being inevitable following his dismissal of the asylum claim rather compounds those earlier two features.
15. I find in respect of Article 8 the judge found the Appellant was unable to meet the requirements of the Immigration Rules namely paragraph 276ADE the reasons he gave for that were confined to a couple of sentences in paragraph 37. Again it is possible that in considering the issue of paragraph 276ADE(vi) the judge mistakenly had in his mind that the Appellant and his family had lived in Kabul for 23 years prior to him coming to the UK.
16. The judge erred in law in this case in the manner in which he dealt with humanitarian protection which was exacerbated by a not insignificant mistake of fact made by a misreading of an earlier judge's decision. I find that the combination of features referred to above does amount to a material error of law such that this matter needs to be considered afresh.

## **Decision**

17. I find that an error of law was made by the judge in this case and that the decision of the First-tier Tribunal needs to be made afresh before a judge other than Judge Moore.

**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 their 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.

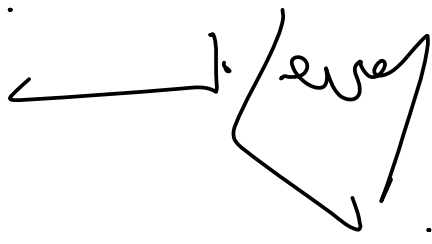
Signed   
Deputy Upper Tribunal Judge Lever

Date 12/11/15

**Directions**

1. This appeal needs to be heard afresh in the First-tier Tribunal before a judge other than First-tier Tribunal Judge Moore.
2. The parties are at liberty to serve any fresh evidence, but in accordance with the appropriate Procedural Rules and on the basis that any evidence is served on the other party and the Tribunal at least ten working days prior to the hearing date.
3. A Pushtu interpreter should be provided unless contrary instructions are provided by the Appellant's solicitors.

Time Estimate: one and a half hours.

 12/11/15