Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01134/2020

THE IMMIGRATION ACTS

Heard remotely via video (Skype for Business)
On 16 November 2020

Decision & Reasons Promulgated
On 1 December 2020

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MH
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms C Bayati, counsel, instructed by Birchtree Law Chambers
For the respondent: Mr D Clarke, Senior Home Office Presenting Officer

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND REASONS

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Background

1. This is an appeal against the decision of Judge of the First-tier Tribunal Abebrese ("the judge") promulgated on 29 May 2020 in which he dismissed the appellant's appeal against a decision of the respondent dated 27 January 2020 refusing his protection and human rights claim.

2. The appellant is a national of Iran who was born in 1992. The appellant claims that he is a Christian convert and would, as a consequence, face persecution if removed to Iran. He claims that he had been involved in attending House Churches in Iran for several months before he left the country in November 2016. The Iranian authorities raided a House Church in July or August 2016 when the appellant was not in attendance but found a register containing the details of attendees. The authorities believed that the appellant converted to Christianity and, following a search of his home, found Christian documents and confiscated his laptop. The appellant was sent two court summons, one in September 2016 and one after he left the country in November 2016. The appellant arrived in the UK on 12 December 2016.

3. The respondent did not accept that the appellant was a Christian convert and rejected his claim as being incredible. The appellant appealed the respondent's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

The Decision of the First-tier Tribunal

4. The judge heard oral evidence from the appellant and his mother, who had entered the UK in 2017. The judge summarised the evidence and set out his findings at [24] to [34]. The judge rejected the appellant's account of events that caused him to leave Iran and found that the appellant was not a genuine Christian convert. At [25] the judge rejected the appellant's account of his friendship with a man called Morteza, a Christian, whom he met at a gym. The judge stated,

   > "The fact that Christianity is illegal in Iran leads me to doubt that Morteza would have been wearing a cross necklace even if it was not been [*sic*] worn in the open."

5. The judge indicated in the same paragraph that he had taken into consideration the evidence of the appellant's mother, but because he had already rejected the appellant's evidence relating to the church register the judge did not find it credible that the appellant would leave personal details on a computer at the family home. The judge stated that the appellant had not mentioned leaving personal details on a computer during his substantive asylum interview. The judge dismissed the protection and human rights appeal.

The challenge to the judge's decision

6. The grounds of appeal take issue with the judge's adverse credibility findings. The grounds assert, *inter alia,* that the judge was wrong when he stated that

Christianity was illegal in Iran, and that the judge made a factual error as the appellant had mentioned the confiscation of his laptop during his asylum interview and that it contained incriminating evidence. The grounds further contend that the judge failed to adequately consider the evidence from the appellant's mother.

Discussion

7. At the start of the 'error of law' hearing Mr Clarke very properly accepted that the judge's adverse credibility findings were unsafe. The appellant had mentioned during his substantive asylum interview that the Iranian authorities had confiscated his laptop (question 196) and that, as a result of evidence uncovered by the Iranian authorities, including his laptop, his fate was "sealed" (question 266). In drawing an adverse inference on the basis that the appellant made no mention of information contained on his computer during his asylum interview, the judge failed to take into account a relevant consideration and placed weight on an irrelevant matter.

8. Mr Clarke accepted as accurate my observation at the outset of the 'error of law hearing' that the judge failed to make any clear findings of fact in respect of the credibility of the appellant's mother. There was no assessment by the judge of the evidence from the appellant's mother relating to his claimed conversion and his attendance at a church in Chiswick. The judge failed to make necessary findings in respect of material evidence. Mr Clarke also accepted my observation that the judge failed to deal at all with the copies of the two court summons upon which the appellant relied. In so doing the judge failed to take into account relevant considerations and failed to make any findings in respect of material evidence.

9. I am additionally satisfied that the judge wrongly stated that Christianity was illegal in Iran when relying on this as one of the reasons for doubting the appellant's account of his relationship with Morteza. It was not however apparent from the decision that Morteza was himself a Muslim who had converted to Christianity. Christians who have converted from Islam are considered apostates in Iran and this is a criminal offence. It is quite possible that this is what the judge meant. His decision was not however sufficiently clear and gives rise to the impression that he took into account an inaccurate factual assertion when assessing the appellant's credibility.

10. For the reasons given above, which were accepted by the respondent, I find that the judge has made mistakes of law in his assessment of the appellant's credibility and that his decision must be set aside in its entirety.

Remittal to First-Tier Tribunal

11. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

12. I have determined that the judge's decision is unsafe because of errors affecting his credibility assessment and his failure to take into account relevant evidence. In these circumstances I consider it appropriate for the case to be remitted back to the First-tier Tribunal for a fresh hearing, a view with which both parties agreed.

Notice of Decision

The making of the First-tier Tribunal's decision involved the making of errors on points of law and is set aside.

The case is remitted back to the First-tier Tribunal to be decided afresh (de novo) by a judge other than judge of the First-tier Tribunal Abebrese.

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

Unless and until a Tribunal or court directs otherwise, the appellant in this appeal 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.

D.Blum 20 November 2020

Signed Date
Upper Tribunal Judge Blum