Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07066/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 10 January 2020	**On 24 January 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

A A-N
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mrs C Johnrose instructed by Broudie Jackson & Canter Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. *Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity direction. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.*

2. This is the appellant's appeal against the decision of First-tier Tribunal Judge Handler promulgated on 12 September 2019 dismissing on all grounds his appeal against the decision of the Secretary of State dated 4

July 2019 to refuse his protection claim made on 29 September 2018 on the basis of a fear of persecution owing to his claimed Baha'i faith.

3. First-tier Tribunal Judge Easterman refused permission to appeal on 21 October 2019, however when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kamara granted permission to appeal on 15 November 2019.

Error of Law

4. For the reasons set out below, I find that there was an error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside and re-made by remitting the appeal to the First-tier Tribunal.

5. The appellant claims that, having been raised as a Shia Muslim, on visiting the UK in 2018 his maternal uncle introduced him to the Baha'i faith and he was "evangelised" at two meetings. On return to Iran he was detained and questioned on arrival for having converted to the Baha'i faith. After being released from prison on conditions, he did not in fact return home but went to the family's holiday home in Karaj. He was then informed by neighbours that the security forces had raided the home as a result of which he asked his mother-in-law to go to the house to retrieve his computers which contained incriminating material. That incriminating material was a means whereby people could evade the Iranian internet filters by using a VPN or proxy server.

6. The grounds argue that the judge's approach was unfair with a propensity to disbelieve the appellant, notwithstanding significant corroborating evidence. It is argued that the judge failed to refer to the skeleton argument of the appellant's representative addressing the alleged discrepancies or inconsistencies, and it also argued that the judge was in error to give little weight to the independent witness, RS, and that her reasons for doing so were wrong, that she failed to consider material evidence, effectively rejecting everything the appellant said.

7. In granting permission to appeal, Judge Kamara considered it arguable that the First-tier Tribunal Judge erred in failing to take into consideration all the available evidence and that there was a lack of anxious scrutiny. For the reasons set out below I agree with that assessment, although I disagree with some of the points raised in the grounds.

8. The according of weight to evidence is a matter for the judge. It is not an arguable error of law for a judge to give too little or too much weight to a relevant factor unless the exercise is irrational. Nor is it an error of law for a judge to fail to deal with every factual issue of argument. Disagreement with a judge's factual conclusions, the appraisal of the evidence or assessment of credibility or the evaluation of risk does not give rise to an

error of law. In Budhathoki [2014] UKUT 00341 (IAC) the Upper Tribunal stated that:

> "It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is however necessary for judges to 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 have won or lost."

9. When considering the appellant's factual claim, the judge correctly directed herself to apply the lower standard of proof. At paragraph 22 she explains she did not expect the appellant to give a fully consistent account but having considered the evidence as a whole, she could not find a reasonable explanation for the difficulties with his account as identified in the decision. Similarly, the judge took into account the evidence of the appellant's uncle and the explanation as to why this person did not attend the hearing. It was open to the judge to observe that there was no evidence to support the claim that the uncle had developed Alzheimer's disease and was thereby unable to attend the hearing so that his evidence could be tested. The judge was not obliged to accept the explanation and was entitled to take into account that the claim to have been converted to the Baha'i faith was unsupported by evidence from the uncle about those first visits to meetings before the appellant returned to Iran.

10. Similarly, whilst a witness RS gave evidence in support of the claimed conversion which was fully taken into account at paragraph 33 of the decision, the judge was entitled to give limited weight to the opinion of this person who, as the judge noted at paragraph 32, was not a leader or person in authority with the faith and therefore was not a Dorodian witness. It was reasonable for the judge to expect the appellant to support his claimed conversion to the Baha'i faith with cogent evidence from a person in authority with the faith.

11. Neither was it necessary for the judge to set out the content of the skeleton argument or even to acknowledge it, provided it was clear from the decision the judge had taken into account all relevant evidence and submissions. Merely because the skeleton argument purported to refute the assertion that there were inconsistencies or discrepancies in the appellant's account does not convert the skeleton argument or indeed the oral submissions into evidence. To some degree the grounds are little more than a disagreement with the decision and an attempt thereby to reargue the appeal. However, having heard the oral submissions of Mrs Johnrose, who took me to the various documents in the case, I am satisfied that there are sufficient material errors in the decision as to infect all of the findings so that the decision cannot stand and must be set aside.

12. The first ground of appeal is that in general terms the decision was unfair in that the judge applied an unfair approach to the evidence. Some of the points made, as I have said above, do not demonstrate an unfair

approach, for example at paragraph 26 of the refusal decision the respondent raised a number of inconsistencies that were alleged to be in the appellant's account. For example, it is said that when he returned to Iran he was arrested at passport control, held and detained and then taken to prison where he was questioned for converting to the Baha'i faith. The skeleton argument demonstrates, and I am satisfied that this is the case, that there were no inconsistencies.

13. The Secretary of State also relied upon alleged discrepancies between the appellant's accounts in the screening interview. It was stated that he had been inconsistent as to when and whether he was detained. However, it is clear from the screening interview that the appellant, within the same answer, corrected his account and said that he was not questioned at the airport but taken to prison where he was questioned. I am not satisfied there is any error of law in the decision in respect of that matter.

14. However, at paragraph 23 of the decision the judge stated that the appellant had given inconsistent evidence about his religion. The judge said that he had stated he had attended two gatherings with his uncle during his visit to the UK in August and September 2018 but was inconsistent about the effect of his attendances at those meetings. The judge pointed out that in his initial screening interview he had said he had no religion and then later in his first asylum interview that he was not religious at the time of that screening interview but had later converted, in the UK. The judge pointed out that in the second interview he said that he had been evangelised during his attendance at those first gatherings with his uncle. The judge considered this to be material going to the core of his claim and being an inconsistency. However, I agree with the submissions that the judge has conflated evangelised with converted. The appellant's case is that he only converted after returning to the UK for the second time. He had attended two meetings with his uncle in about August or September 2018 but makes clear that whilst he had been evangelised, he was not converted and not in fact interested at that stage. The point is made at question 14 of the second interview where he agreed he had been evangelised at those first two meetings but at question 18 of the same interview, which was held in March 2019, that at that point in time he had no interest in converting to the faith. He did not consider himself a Muslim but had no interest in other faiths. In his opinion it was just an interesting place to go, but at question 19 said he was curious to know more. So even though he had said that he had been evangelised he was not saying that he had been converted at that stage, during his first visit to the UK. In question 97 of the first interview he confirmed that he is now of the Baha'i faith and explained that at the time of his initial screening interview he was not converted, and said he had been converted since he had been living in the UK, in other words during his second visit to the UK. It follows that the judge has taken what the appellant had said to be an inconsistency because he had used the word evangelised. It may be a misunderstanding but it is quite clear from the interviews that the appellant was consistent in saying that whilst he had attended two meetings during his first visit to the UK, he was not converted to the faith

until after arriving in the UK on his second visit. The relevance of this is that the judge has relied on this as a material inconsistency undermining his claim to be of the Baha'i faith which would therefore put him at risk on return.

15. At paragraph 25 of the decision the judge suggests that the appellant has given an inconsistent account of his detention on return to Iran on 12 September 2018 and the conditions of his release. In the first interview at question 80 he was asked was he released on bail. He said 'yes, they said I had to stay around and when required go back and report to them, they did not set a date.' He was not asked whether there were any conditions. In the second interview between questions 36 and 38 he was asked why he was released. He said, 'I cannot give you the reason why they released me, I placed house deeds for my release, they were the deeds to my mother-in-law's house and there were conditions.' Only then was he asked what those conditions were, to which he replied that 'the terms were I should return wherever they requested me and my phone to be switched on and also any contacts that I have I should inform them. I do not know what they meant by contacts. I was accused of being Baha'i but this was not true.' Properly read, the two accounts are not in fact inconsistent. At paragraph 25 the judge relied on this inconsistency, stating that if there had been conditions he could have been reasonably expected to have said so when first asked. However, he was not actually asked whether there were conditions during the first interview. In the circumstances, I find that the judge has relied on an alleged inconsistency which is not in fact an inconsistency.

16. Judge Handler also relied on a point made about the computers at paragraph 27 of the decision. There the judge said there was no reasonable explanation, or the appellant had offered no reasonable explanation, as to why his family did not bring those computers with them when they came to pick him up from detention and take him to the holiday home in Karaj. In the preceding paragraph, at paragraph 26, the judge stated the appellant had not provided a satisfactory explanation regarding the computers he says were taken when his home was raided. The judge was entitled to make a generalised point that if he was conducting illegal activities on his computers he might well be expected to be more cautious or take precautions to avoid the computer content being discovered. However, he had left them in the property in Tehran, from where the authorities seized them.

17. Mrs Johnrose points out that the appellant said that when he travelled away from Iran he always left his computers behind. That was apparently in re-examination during the oral evidence. None of the circumstances of this account would explain why the family would know to bring the computers with them when they came to pick him up from detention; there is nothing to suggest that they knew that he was engaged in illegal activity using his computers. He had had no opportunity to get the computers on his return from the UK, because he was detained at the airport and taken to prison for questioning. Having gone to the holiday

home a wise person might have thought it would be better to get rid of or hide the computers. It is not clear what the timeline was but the next event that happened was that neighbours informed him or the family that their home had been raided. He then asked his mother-in-law to go to the property to retrieve his computers, but she was too late, they had already been taken. The judge's reliance on this issue seems unfair because there is no reason why the family would remove the computers unless they had been told to do so by the appellant.

18. The second ground is that the judge made a material misdirection in failing to make any findings in respect of the evidence of the additional witness as to the appellant's conversion in the UK. This is addressed from paragraph 32 of the decision where the judge notes the witness RS had a handwritten statement and gave oral evidence. This person stated that he was a Baha'i but held no official position. There was no Dorodian witness, despite the appellant's claimed conversion. However, the witness statement does provide information about the appellant's attendance at meetings as well as that witness's opinion about the appellant's faith. Whilst little weight might be given to the opinion, the judge should have taken into account the supporting evidence that the appellant had been attending the faith meetings. More significantly, it is not clear what the judge made of the evidence of this witness. No conclusion is reached between paragraphs 32 and 34 of the decision about his evidence.

19. The third ground is that the judge omitted to consider material evidence in relation to how the appellant left Iran. At paragraph 41 the judge stated that the appellant's travel documents are consistent with the fact that he flew from Istanbul to Turkey but that does not make any sense because Istanbul is in Turkey, so it is not clear what the judge meant. The judge went on to say, "however they do not offer a satisfactory explanation in respect of the inconsistencies in the evidence regarding the appellant's exit from Iran set out above. I accept that these are the documents under which the appellant exited from Iran".

20. Mrs Johnrose took me to those documents, which comprise two tickets with translations and copies of the appellant's passport with stamps. It was accepted at the hearing, as noted at paragraph 20 of the decision, that when the refusal decision sought to rely upon an inconsistency as to which airport the appellant flew into there was a mistake. The respondent had confused entry stamps with exit stamps. What the documents show, if they are to be accepted, is that the appellant left Iran at a border crossing on 23 September and is stamped as having entered Iraq on 24 September. There is then a flight document showing a flight from Baghdad in Iraq to Istanbul Turkey on 23 September. The other document is dated 22 September, the day before. It is not clear whether this is a bus ride or a flight, but it appears to be transport within Iran to Miran which is where the appellant crossed the border into Iraq. The judge accepted those documents but stated that they did not provide a satisfactory explanation of inconsistencies in the evidence regarding the appellant's exit from Iran set out above. The only reference earlier in the decision to

inconsistencies above is at paragraph 30 of the decision where the judge stated that there are a number of internal inconsistencies in the appellant's evidence about how he left Iran which the judge considered he had not satisfactorily explained. "In the circumstances where on the appellant's evidence the authorities have raided his home because they could not find him it is inconsistent that he would be able to leave the country in the manner he describes". To some extent the judge is entitled to make a point that if the appellant is wanted by the authorities he might have some difficulty in exiting the country through recognised and official channels. However, it is not clear that there is any real inconsistency in the terms asserted by the judge. The judge does not make clear what the inconsistencies are and why they are not explained by the evidence. In the circumstances, I cannot be satisfied the judge has made a proper assessment of the documentary evidence in comparison with the appellant's claim as to how he left Iran.

21. In respect of the documentary evidence, Mrs Johnrose makes a general point that the judge appears from paragraph 35 of the decision to have discounted most of the documentary evidence. The judge talks about giving limited weight to various pieces of documentation but there does not appear to be any clear findings other than to say 'I attach limited weight to those documents.' It is not clear what conclusions the judge had reached or what reasons the judge was relying on for the conclusions set out in very brief terms at paragraph 42 of the decision.

22. In his submissions Mr Tan accepted that the appellant's claim is in two overlapping strands, first whether he was detained on return to Iran on an allegation of having converted to the Baha'i faith and is thereby at risk on a further return, and, secondly, whether he is in fact a genuine convert in the UK to that faith. Mr Tan found difficulty in justifying the Tribunal's decision and agreed that the judge had conflated evangelised with converted, and that this element was fundamental to the decision, repeated within the decision so that all other findings are thereby infected by the error.

23. Mr Tan also had difficulties in relation to some of the other points made by Mrs Johnrose as I have outlined above. In the circumstances Mr Tan did not resist the appeal any further, having heard a detailed exposition of the documentation and the evidence by Mrs Johnrose in her submissions.

24. In all the circumstances and for the reasons set out above, whilst I do not agree with all of the submissions or all of the grounds, I am satisfied that there are sufficient errors of law in this decision as to require it to be set aside and re-made. Given the centrality of the errors to the findings, it is not possible or practical to preserve any of the findings and all must be remade.

Remittal

25. When a decision of the First-tier Tribunal has been set aside, Section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions or it must be re-made by the Upper Tribunal. The scheme of the Tribunals, Courts and Enforcement Act 2007 does not assign the function of primary fact-finding to the Upper Tribunal. The findings in this case are unclear, the errors mean there has not been a valid determination of the crucial issues in the appeal. In all the circumstances and at the invitation requested by both parties, I re-list this appeal for a fresh hearing in the First-tier Tribunal on the basis that this case was squarely within the Senior President's Practice Statement at paragraph 7.2

Notice of Decision

26. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision must be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the directions below.

An anonymity direction is made.

Signed
Upper Tribunal Judge Pickup

Dated 20 January 2020

Consequential Directions

- The appeal is remitted to the First-tier Tribunal sitting at Manchester.
- The appeal is to be decided afresh with no findings of fact preserved.
- The estimated length of hearing is three hours.
- The appeal may be listed before any First-tier Tribunal Judge with the exception of Judges Easterman and Handler.
- An interpreter in Farsi will be required. It is expected that there will be the appellant plus one other witness.
- The First-tier Tribunal may give such further alternative directions as are deemed appropriate.
- The appellant is to ensure that all evidence to be relied upon is contained within a single consolidated, indexed and paginated bundle of all objective and subjective material together with any skeleton argument and copies of all case authorities to be relied on. The Tribunal is unlikely to accept material submitted on the day of the forthcoming appeal hearing.

Signed
Upper Tribunal Judge Pickup

Dated 20 January 2020

To the Respondent
Fee Award

The outcome of the appeal remains to be decided. In the circumstances, I can make no fee award.

Signed
Upper Tribunal Judge Pickup

Dated 20 January 2020