



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001805
First-tier Tribunal Nos:
PA55909/2021
IA/17755/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SLH
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed, instructed by Knightbridge Solicitors
For the Respondent: Ms S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 25 August 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Iraq born on 7 May 1997. He arrived in the UK on 30 September 2017 and claimed asylum on 4 October 2017. The basis of his claim is that he had had a relationship with a Christian girl who

became pregnant, as a result of which he was threatened with serious violence by his father and fled the country. Having arrived in the UK he then became a Christian convert. His asylum application was refused in a decision dated 5 July 2019. He appealed against that decision and in a determination dated 12 March 2020 by First-tier Tribunal Judge Dunne, his appeal was dismissed and he became appeal rights exhausted on 27 March 2020. Notably, however, Judge Dunne accepted that the Appellant was a convert to Christianity since his arrival in the UK: [47](b) of that decision and reasons refers.

2. Submissions in support of a fresh asylum claim were made on 23 August 2021. These were refused with the right of appeal on 11 November 2021. The Appellant's appeal came before First-tier Tribunal Judge Cruthers for hearing on 24 January 2023. In a decision and reasons promulgated on 3 April 2023, the appeal was dismissed, essentially on the basis that the Judge did not accept the credibility of the Appellant's account nor that he would be at risk of persecution on return.
3. The Appellant sought to appeal that decision on the basis of two grounds of appeal. Firstly, that there had been procedural unfairness in relation to the fact that there was a Rule 35 report which asserted that the Appellant's former partner was dead and this was inconsistent with his evidence, however this point was never put to him, and secondly it was asserted that the judge erred materially in law in finding that the Appellant was no longer a Christian because he no longer attends church and in so doing he departed from the previous findings of Judge Dunne who accepted the Appellant's conversion to Christianity.
4. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 19 May 2023 in the following terms:
 - “1. *The grounds assert that the judge erred in referring to a Rule 35 report, which had not been put to the appellant; and by failing to follow a previous judicial decision under the principles of Devaseelan.*
 2. *In an extremely long decision, the judge does refer to a Rule 35 report, and highlights inconsistencies in that report when considered against the appellant's main account. There is nothing to suggest that this issue was put to the appellant during the hearing.*
 3. *A previous judicial decision, accepted that the appellant was a convert to the Christian faith. However, the judge found that he was not a Christian and therefore, departed from the previous decision. It is not clear from the decision whether the respondent, under the principles of Devaseelan, accepted that the appellant was still a Christian.*
 4. *These matters must be explored further. Accordingly, there is an arguable error of law”.*
5. The Respondent submitted a Rule 24 response dated 5 June 2023 where it was accepted that the Appellant's Christian conversion was not in issue between the parties but asserts that the appeal would have been dismissed

anyway because the Appellant would not be at risk on return as a Christian convert given that he has ended his involvement and so would not on return engage in conduct which would put him at risk of harm.

Hearing

6. At the hearing before the Upper Tribunal Mr Ahmed on behalf of the Appellant essentially relied on the grounds of appeal and asserted that the judge had erred materially in law. Ms Lecointe for the Secretary of State accepted that the point recorded in the Rule 35 report that the Appellant's former partner had been killed had not been put to him and although this was an error she did not accept it was a material error of law. However, in relation to the second ground of appeal Ms Lecointe accepted that there should have been more extensive reasoning on the part of the judge in order to depart from the previous finding of Judge Dunne that the Appellant is a Christian convert and on that basis there was a material error of law.
7. In light of Ms Lecointe's helpful concession, I agreed there was a material error of law in relation to ground 2. More was clearly required by the way of reasons on the part of the First tier Tribunal Judge before departing from the finding by Judge Dunne that the Appellant is a convert to Christianity. The fact that he may not have been "active" in pursuance of his religion does not necessarily mean that he no longer considers himself to be a Christian nor that he would continue life as a Christian on return to Iraq. The issue to be addressed is whether, contrary to Judge Dunne's finding, he would be at risk on return to Iraq as a consequence of his conversion to Christianity.
8. I further find that the Judge erred materially in law in finding against the Appellant in respect of a discrepancy between what he is alleged to have stated to a medical practitioner in a rule 35 report and his witness evidence, having failed to put the point to the Appellant in the course of the hearing in order to give him the opportunity to respond, which is procedurally unfair. In these circumstances the only fair outcome is to remit the appeal entirely for a re-hearing before a different First tier Tribunal Judge.

Notice of Decision

9. I set aside the decision of First-tier Tribunal Judge Cruthers and remit the appeal for a hearing *de novo* at the First-tier Tribunal in Manchester. I make the following directions:
 - 9.1. The appeal should be listed for three hours;
 - 9.2. A Kurdish Sorani interpreter will be required.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 September 2023