



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

Appeal Number: PA/01110/2017

THE IMMIGRATION ACTS

**Heard at Liverpool
On 4 December 2017**

**Decision Promulgated
On 11 December 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

[S C]

~~[No anonymity direction made]~~

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr A Sinker, instructed by Howe & Co Solicitors

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Smith promulgated 2.5.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 20.1.17, to refuse his protection claim, based on claimed membership of the Church of the Almighty God (CAG).
2. The Judge heard the appeal on 6.3.17.
3. First-tier Tribunal Judge Bird granted permission to appeal on 14.9.17.

4. Thus the matter came before me on 4.12.17 as an appeal in the Upper Tribunal.

Error of Law

5. For the reasons summarised briefly below, I found such error of law in the making of the decision of the First-tier Tribunal as to require it to be set aside and remade, remitting the appeal to the First-tier Tribunal in accordance with the directions below.
6. In essence, the grounds assert that the judge failed to properly consider the totality of the evidence in relation to the appellant's faith and in particular failed to take into account answers in interview between Q73-91, and failed to consider the two articles relied on by the appellant.
7. In granting permission to appeal, Judge Bird considered the grounds arguable, and observed that the decision appeared to be subjective and inadequately reasoned.
8. At [25] the judge considered that the appellant's account in interview was not helpful in assessing whether his professed faith is genuine, as the information could have been accessed from the Internet in advance of the interview. However, at [26] the judge asserted that the appellant was unable to answer theological questions, such as the doctrine of a female Christ and why the faith disagrees with the mainstream Christian view of the Trinity.
9. Mr Sinker pointed out that from Q73 the appellant was able to explain the female Christ, and at Q88 and Q111 was able to explain the faith's view of the Trinity.
10. The second primary ground of appeal relied on at the hearing before me was that the judge failed completely to consider the two articles written by the appellant for his church and posted on their website, copies and translations of which are in the appellant's bundle. The appellant also had a church membership card at A8, and photographs of him attending church. None of this is addressed in the decision of the First-tier Tribunal.
11. Mr McVeety conceded that there clearly was relevant material relied on by the appellant but not considered by the First-tier Tribunal. I agree, without consideration of the material relied on, the decision cannot be objectively fair and thus disclosed an error of law in the making of the decision. Even with this material considered, it does not necessarily follow that the appeal would be allowed, but I cannot say that it would not.

Remittal

12. 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 remade by the Upper Tribunal. The scheme of the Tribunals Court and

Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. The errors of the First-tier Tribunal Judge vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.

13. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to deprive the appellant of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

Conclusion & Decision

14. 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 should 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.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Consequential Directions

15. The appeal is remitted to the First-tier Tribunal sitting at Manchester;
16. The appeal is to be decided afresh with no findings of fact preserved;
17. The ELH is 3 hours;
18. The appellant is likely to be the sole witness;
19. An interpreter in Mandarin will be required;
20. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Smith and Judge Bird;
21. The appellant is to ensure that all evidence to be relied on 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 will not accept materials submitted on the day of the forthcoming appeal hearing;

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award *Note: this is not part of the determination.*

I make no fee award.

Reasons: No fee is payable and thus no fee award can be made.



Signed

Deputy Upper Tribunal Judge Pickup

Dated